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PREFACE.

The Editor desires to thank the proprietors of the undermentioned reports for their courteous permission to use the headnotes of the cases digested.

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Reference by Judge at trial—Judge's directions to arbitrator.—A Judge referred a case to Arbitration and gave the arbitrator certain directions as to the interpretation of the pleadings. An award was made and a verdict entered. *Held,* that as no objection was taken to his Honour's rulings until after the verdict was entered, it was too late to ask for a new trial on the ground that the rulings were wrong. MUNRO *v.* MURRAY, 22 W.N. 113. [*New South Wales.*]

Arbitrator a valuer—Indifferent person—Removal of arbitrator—Practice.—A clause in a fire policy provided that if a difference should at any time arise between the insurance company and the insured as to the amount of any alleged loss or damage by fire, such difference should be referred to the

arbitration of some indifferent person to be agreed upon by both parties, or, failing such agreement, of two such persons, one to be chosen by the party claiming, and the other by the company. In case of disagreement between the arbitrators the difference was to be decided by an umpire to be chosen by the arbitrators before entering on the reference. The clause further provided that the award of the arbitrator, arbitrators, or umpire should be conclusive evidence of the amount of the loss or damage; that the umpire should sit and preside at all meetings of the arbitrators during the reference; that each party should pay his or their own costs of the reference and a moiety of the costs of the award; and that it should be a condition precedent to the commencement of any action on the policy that the amount of the loss or damage should have been referred, ascertained, and awarded as in the clause provided. *Held*—(1) That the office of the persons to be appointed to act under this clause was not that of valuers, but that of arbitrators, and that the clause amounted to a submission to arbitration within the meaning of The Arbitration Act, 1890, the provisions of which the Court had, therefore, jurisdiction to enforce. (2) That the provision of the clause, that the persons to be nominated by the parties should be "indifferent" persons, did not merely exclude persons having a pecuniary interest in the subject matter of the dispute, but excluded also persons who might be reasonably presumed, owing to their prior relationship with one of the parties to the dispute, in connection with the subject matter of the dispute, to have a bias in favour of such party. (3) That where the person nominated by the company, though not a general officer of the company, had, before the reference, been specially retained by the company to examine and report and advise the company, and had so examined and reported and advised the company, upon the very matter in dispute between the parties, he could not be said to be an "indifferent" person within the meaning of the clause. (4) That the claimant need not await the result of what would be an abortive arbitration before applying to the Court for relief, but was entitled to apply at once for the removal of the arbitrator before the reference was entered upon. *Held, also*, that such an application may be made either by motion to the Court or by summons in Chambers. *In re* COLEMAN AND ROYAL INSURANCE CO., 24 N.Z.L.R. 817; 7 Gaz. L.R. 414. [*New Zealand.*]

Arbitrator judge of law and fact—Setting aside award.—As a general rule an arbitrator is a judge of law as well as of fact, and his decision cannot be objected to on the ground that he misconceived the law, or possibly that the law was unjust. Judgment of the Full Court of Western Australia (6 W.A. L.R. 86) reversed, and the award of the arbitrator restored. GOODE *v.* BECHTEL, 2 C.L.R. 121. [*Western Australia.*]

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Ca. sa.—Defamation—Bankruptcy.—Sec. 24 sub-sec. (1) of the Defamation Act (N.S.W.), 1901, which provides (*inter alia*) that "no law now or hereafter in force for the relief of insolvent debtors . . . . shall be construed to extend to affect or discharge from his liability any defendant indebted" for any damages in an action for publishing defamatory words, refers to statute law only. The common law doctrine, that a judgment creditor may be concluded by his election as to the method of execution to which he will have recourse for the satisfaction of his judgment, is not affected by that section. The respondent, who had obtained a verdict against the appellant in an action for defamation and breach of contract and had signed judgment for the amount of the damages and costs, presented a petition in bankruptcy fotr he sequestration of the appellant's estate, and, an order having been made for sequestration, proved as a creditor for the full amount of the judgment. She then procured the arrest of the appellant on a writ of *capias ad satisfaciendum* for the amount of the damages recovered on the count for defamation. *Held*, that the proceedings in bankruptcy were in the nature of an execution against the goods of the judgment debtor, and that the respondent had thereby irrevocably determined her election as to the form of remedy for the satisfaction of the judgment debt, and was therefore debarred from afterwards, while the bankruptcy was still pending, having recourse to execution against the body of the debtor. *Ex parte Wilson* (1 Atk. 152); and *Miller* v. *Parnell* (6 Taunt. 370), followed; *Nicholls* v. *Rosenfeld* (7 N.S.W.L.R. 322), distinguished. *Per* Griffith C.J. Sec. 10 sub-sec. (3) of the

Bankruptcy Act, 1898, which provides that no creditor to whom a bankrupt is indebted in respect of a debt provable in bankruptcy shall have any remedy against the property or person of the bankrupt in respect of the debt unless with the leave of the Bankruptcy Court, is not necessarily inconsistent with sec. 14 of 11 Vic. No. 13, but may be read as not extending to the case of a defendant indebted for damages in an action for defamation, and therefore it is not necessarily repealed by the re-enactment of the latter section in sec. 24 of the Defamation Act, 1901. *Quære*, whether sec. 44 (3) of the Bankruptcy Act, which deals specifically with the case of bankruptcy of defendants in actions for defamation, is not necessarily a limitation or qualification of the general provisions of sec. 14 of 11 Vic. No. 13, and therefore impliedly repealed by sec. 24 of the Defamation Act, 1901. *Per* O'Connor J.—After the release of the bankrupt defendant's estate, if the judgment debt in respect of the damages for defamation has not been wholly satisfied, the liability of the defendant for the balance continues by virtue of sec. 24 of the Defamation Act, 1901, and the judgment creditor has the same choice of methods of execution as before the bankruptcy. Decision of the Full Court of New South Wales, *Martin* v. *Ferris* ([1905] 5 S.R. (N.S.W.) 287; 22 N.S.W.W.N. 90), reversed, and decision of A. H. Simpson J. (22 N.S.W.W.N. 52), restored, but on a different ground. FERRIS *v.* MARTIN; MARTIN *v.* FERRIS, 2 C.L.R. 525; 11 A.L.R. 470; 5 S.R. 287; 22 W.N. 52, 90. [*New South Wales.*]

Revival of Imprisonment for Debt Abolition Act, 1874.—The effect of The Imprisonment for Debt Limitation Amendment Act, 1903, repealing sec. 3 of The Imprisonment for Debt Limitation Act, 1900, is to revive (subject to the conditions imposed by the last mentioned Act) so much of sec. 8 of The Imprisonment for Debt Abolition Act, 1874, as was impliedly repealed by the Act of 1900. LOTHIAN *v.* BUGDEN, 7 N.Z. Gaz. L.R. 81. [*New Zealand.*]

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Legal Practitioners Reciprocity Act, 1903 (No. 1887), ss. 2, 7.—The effect of section 7 (4) of the Legal Practitioners Reciprocity Act,

1903, is that, notwithstanding the provisions of sec. 4 of the Legal Professions Practice Act, 1895, a person who has been duly admitted and qualified to practise as a barrister, &c., of any of the superior Courts of England, Scotland, or Ireland, is entitled to be admitted as a barrister or solicitor in Victoria, subject only to the rules and conditions made and imposed by the Council of Legal Education. *Semble*, the condition imposed by sec. 2 of the Legal Professions Practice Act, 1895, that a barrister or solicitor admitted to practise in any part of His Majesty's dominions, who applies to be admitted to practise as a barrister and solicitor in Victoria, shall possess "a qualification equal in value to that required by this section," still applies to barristers and solicitors admitted to practise in any part of such dominions, other than England, Scotland, and Ireland, and the States of the Australian Commonwealth *In re* ATKINSON, 1905 V.L.R. 408; 26 A.L.T. 223; 11 A.L.R. 181. [*Victoria.*]

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Bill of costs—Special agreement.—The provisions of sec. 207 of the Supreme Court Act, 1890, apply only where the business transacted is such as is connected with the profession of an attorney or solicitor, and therefore a solicitor can sue for work and labour done in connection with work usually performed by an agent, without the previous delivery of a signed bill of costs. The fact that the amount to be paid for work and labour is agreed upon between the parties before the work is done, does not oust the jurisdiction of justices to adjudicate upon the claim. SHARP *v.* SOUTHERN, 1905 V.L.R. 223; 26 A.L.T. 231; 11 A.L.R. 162. [*Victoria.*]

An agreement between a client and his solicitor purported to be an agreement by the client to pay a gross sum to a solicitor for his costs and charges. The evidence showed that the agreement really entered into was to pay a gross sum in respect of both costs and of money advanced by the solicitor to the client by way of loan. *Held*, that the agreement was not within sec. 262 of the Supreme Court Act, 1890, and therefore the delivery of a bill of costs could be ordered. *In re* DORIA; *Ex parte* VICKERY, 26 A.L.T. 195; 11 A.L.R. 97. [*Victoria.*]

—— **Set-off.** — When a complaint of a civil debt recoverable summarily is brought against a solicitor in a Court of Petty Sessions, he is entitled, though he has not delivered a signed bill one month previously, to set-off his bill of costs against the complaint. Where such complaint is for less than £5, but the solicitor's bill of costs as set-off exceeds £5, and the justices make an order for the amount claimed by the complainant, but decline jurisdiction with regard to the set-off, the sum in respect of which the defendant applying for an order to review their decision is aggrieved exceeds £5. On admission of proof of retainer, and on their being satisfied that the work comprised in the set-off was done, the justices have power to tax the bill of costs themselves; or to refer it for taxation to the proper officer, and adjourn their judgment in the meanwhile. The justices have jurisdiction to order the recovery by the defendant of the amount by which his bill of costs so set-off exceeds, after taxation, the debt or demand claimed and proved by the complainant. ROBINSON *v.* VALE, 1905 V.L.R. 405; 26 A.L.T 217; 11 A.L.R. 189. [*Victoria*].

—— **Taxation.**—After a solicitor's bill of costs for work done in preparing a settlement had been taxed and paid by the trustees of the settlement, a beneficiary, having a life interest in the settled property, assigned her interest. The assignee applied by summons that the solicitor's bill of costs be referred "for review and correction" of the previous taxation thereof. *Held*, by Hood J., in Chambers, that the assignee was not, under sec. 213 of the Supreme Court Act 1890 (No. 1142), "a party interested in the property out of which the trustee paid the bill," and, therefore, was not entitled to make the application. *Held*, by Madden C.J., and Holroyd J. (a'Beckett J., dissenting), that the summons was incurably defective, inasmuch as it referred to a different process from that contemplated by sec. 213 of the Act, and twelve months had expired since the payment of the bill. *In re* ISAACS, 1905 V.L.R. 585; 27 A.L.T. 59; 11 A.L.R. 321. [*Victoria.*]

An order was made referring a solicitor's bill of costs in a lunacy matter to taxation. The bill was taxed by the Deputy Registrar, on behalf of the Master in Equity, but without any delegation of authority from the Master under sec. 22 of the Legal Practitioners Act, disputed items being referred to the Master for his decisions on questions of principle, and the certificate was signed by the Master. *Held*, that the Deputy Registrar was the taxing officer within the meaning of the Legal Practitioners Act, and that the Master had no power to sign the certificate. *Ex parte* MCLAUGHLIN, 5 S.R. 437; 22 W.N. 123. [*New South Wales.*]

—— **Probate jurisdiction—Special work.**—Where a proctor desires to charge for special or unusual work done in the probate jurisdiction he must get his whole bill of costs taxed. The amount paid for probate duty ought not to be included in a proctor's bill of costs as a disbursement. *Ex parte* AIKEN; *In re* LUCAS, 1905 V.L.R. 361; 27 A.L.T. 10; 11 A.L.R. 198. [*Victoria.*]

—— **Stay of proceedings—Judgment on order under Legal Practitioners Act, 1898, s. 39.**—*See* PRACTICE. *In re* FREEHILL, 22 W.N. 98. [*New South Wales.*]

Misconduct—Suspension from practice.—One D. gave a stock mortgage over certain sheep to B. & Co. for £200. Before the mort-

gage was registered the respondent, D.'s attorney, wrote at D.'s request to B. & Co. asking them to consent to substitute the figures £850 for the £200, without any fresh consideration, and to alter the date of the document so amended so as to permit it to be registered within the proper time. D.'s object was to protect one of his creditors. The original mortgage having meanwhile been registered it became impossible to carry out the suggested alteration. The Court, although they were satisfied that the respondent had not been actuated by any corrupt motive, and although the deed had never been actually altered and no one had been damaged, suspended the attorney from practice for twelve months. *In re* COLEMAN, 5 S.R. 272; 22 W.N. 79. [*New South Wales.*]

—— **Appeal to High Court.**—*See* FEDERAL LAW. *In re* COLEMAN, 2 C.L.R. 834; 11 A.L.R. 243. [*High Court.*]

Struck off the roll—Re-admission.—An attorney who was struck off the roll was refused re-admission after a lapse of 8½ years years, though he brought forward affidavits of good conduct in the meantime, but a date was fixed when he might apply again. *In re* MEAGHER, 4 S.R. 647; 21 W.N. 229. [*New South Wales.*]

Settled Land Act—Appointment to act for infant with power to charge costs.—*See* SETTLED LAND. *In re* NGAWAKAAKUPE, 7 N.Z. Gaz. L.R. 450. [*New Zealand.*]

AUCTIONEERS.

Licensing meeting—Right to be heard.—At a meeting of justices for granting auctioneers' licenses the enquiry into an applicant's character must take place in open Court and the applicant must be acquainted with any charge brought against him, and have an opportunity of disproving it. If it is not established that he is of bad or doubtful character the justices cannot refuse the license. *Ex parte* LUCAS, 5 S.R. 113; 22 W.N. 20. [*New South Wales.*]

Applicant for license himself a justice.—*See* JUSTICES. *Ex parte* LUCAS, 5 S.R. 113; 22 W.N. 20. [*New South Wales.*]

Factories and Shops Act.—As to application of Factories and Shops Act, 1900, to sale by auction, *see* YOUNG *v.* HALL, 1905 S.R. (Q.) 151; Q.W.N. 57. [*Queensland.*]

AUTREFOIS ACQUIT.

See JUSTICES—RES JUDICATA.

And *see* CRIMINAL LAW.—*Ex parte* SPENCER; SHERWOOD *v.* SPENCER, 2 C.L.R. 250; 5 S.R. 150; 22 W.N. 40. [*New South Wales.*]

BAILMENT.

What is a bailment.—*See* CRIMINAL LAW. SLATTERY *v.* R.; R. *v.* SLATTERY, 2 C.L.R. 546; 5 S.R. 294; 22 W.N. 92. [*New South Wales.*]

Larceny as bailee.—*See Ib.*

BAKERS AND MILLERS ACT.

See BREAD.

BANK.

Contract by manager.—Sec. 32 of The Bank of New Zealand and Banking Act, 1895, authorised the Governor in Council to make regulations conferring on the Assets Realisation Board, incorporated under that Act, all such powers, &c., as the Governor in Council should deem expedient for enabling it to carry out its objects. Under this authority the Governor in Council made a regulation providing that any contract which, if made between private persons, (1) must be by deed; (2) must be in writing signed by the parties thereto or their agents; or (3) might be made verbally without writing, might, when made by the Board, (*a*) in the first case be executed under the common seal of the Board; (*b*) in the second case be signed on behalf of the Board by the Chairman or by the other two members of the Board; (*c*) in the third case be made verbally without writing by the Chairman or by the other two members of the Board on behalf of the Board; and that all contracts might be varied and discharged in the same manner respectively. The General manager for the Board, by direction of the Board, signed on its behalf a written consent to join in the proposed lease from the respondents to the appellant. *Quære*, whether this was binding upon the Board. PEARCE *v.* STEVEN, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176. [*New Zealand.*]

Bank of New Zealand and Banking Act—Assets Realisation Board.—Under the Bank of New Zealand and Banking Act, 1895, the Assets Realisation Board constituted by that Act is a purchaser for value of the assets which the Act directs that it shall purchase, and the Board can therefore set up the defence of purchase for value without notice when its title is attacked on the ground of any supposed defect in the title of the Bank of New Zealand or of the Bank of New Zealand Estates Company. HAMILTON *v.* BANK OF NEW ZEALAND, 24 N.Z.L.R. 109; 7 Gaz. L.R. 277. [*New Zealand.*]

Overdraft—Discharge of sureties by extension of time.—*See* PRINCIPAL AND SURETY.

DEANE *v.* CITY BANK OF SYDNEY, 2 C.L.R. 198; 11 A.L.R. 1. [*New South Wales.*]

Reduction of capital.—*See* COMPANY. *In re* AUSTRALIAN JOINT STOCK BANK, 5 S.R. 44; 21 W.N. 210. [*New South Wales.*]

Debentures.—The right of the Bank of New Zealand to redeem debentures held by the Assets Board for the unpaid balances of purchase moneys of assets sold by the Board accrues, under sec. 27 of the Bank of New Zealand Act, 1903, at any time that it becomes the holder of any debentures, whether issued before or after the passing of the Act. BANK OF N.Z. *v.* ASSETS REALISATION BOARD, 7 N.Z.L.R. Gaz. 483. [*New Zealand.*]

Where land is purchased by the Government from the Assets Board under the Lands for Settlement Consolidation Act, 1900, and the purchase money is paid by debentures issued under sec. 31 of that Act, such debentures are "securities" within the meaning of sec. 27of the Bank of New Zealand Act, 1903, and the bank may demand that they be handed over under the provisions of the Act. The facts that the rate of interest reserved by the documents so exchanged, and that the transaction may result in a loss to the Board upon their market value, does not affect the operation of the statute. BANK OF NEW ZEALAND *v.* ASSETS REALISATION BOARD, 7 N.Z. Gaz. L.R. 483. [*New Zealand.*]

BANK OF NEW ZEALAND OFFICERS' GUARANTEE AND PROVIDENT ASSOCIATION ACT.

See PROVIDENT ASSOCIATION.

BANKRUPTCY.

JURISDICTION—Declaration as to bankrupt's property.—*See Property of Bankrupt. Col.* 18.

ACT OF INSOLVENCY—Deed of arrangement.—By a deed, to which the parties were a debtor of the first part, a trustee, of the second part, and the creditors of the debtor whose names and seals appeared in a schedule to the deed, or who otherwise should assent to the deed, of the third part, the debtor assigned to the trustee all his property upon trust, after payment of charges and expenses, to apply the residue in payment of the debts owing to the creditors of the debtor whose names appeared in the schedule and to all others (if any) of the creditors of the debtor who should by reasonable efforts in that behalf satisfy the trustee that they were entitled at the date of the deed to be included as creditors, without any priority or preference and in due course of administration. The deed also contained a proviso that the trustee should not be precluded from inquiring into, and insisting on such proof as he should deem reasonable of the debts owing to creditors whose names appeared in the schedule, and should not be bound to pay any dividend on any amount inserted in the schedule beyond what should by reasonable efforts in that behalf be shown to have been owing at the date of the deed. Further, it contained a clause whereby in consideration of the premises the parties of the third part released the debtor from any claims in respect of their debts, provided that the release should be inoperative if the deed should not be registered in accordance with law, or if the deed should be set aside. *Held*, that the deed was a conveyance or assignment for the benefit of "creditors generally" within the meaning of sec. 106 of the Insolvency Act, 1897, and was therefore an act of insolvency within sec. 37 (1) of the Insolvency Act, 1890, and also that it was a deed of arrangement within the meaning of Part VI. of the Insolvency Act, 1897. Judgment of Full Court (1905 V.L.R. 51; 26 A.L.T. 103); affirmed. *In re Wiedman*, (5 V.L.R. (1 P. & M.) 32) considered. DOBSON *v.* BEATH, SCHEISS & Co., 2 C.L.R. 277; 11 A.L.R. 92; 1905 V.L.R. 51. [*Victoria.*]

—— **Estoppel.**—A debtor executed an assignment of all his property to a trustee for the benefit of his creditors generally by a deed to which the parties were the debtor of the first part, the trustee of the second part, and the creditors whose names appeared in the schedule to the deed or who otherwise should assent to it of the third part. *Held*, that a creditor, whose name did not appear in the schedule, but who had assented to it, was a party to the deed, and therefore was estopped from treating the deed as an act of insolvency. What conduct would amount to assent to such a deed, considered. *In re* PEARSE; *Ex parte* BRENTNALL, 1905 V.L.R. 208; 26 A.L.T. 179; 11 A.L.R. 70. [*Victoria.*]

PETITION—By debtor—Liabilities.—A debtor may on his own petition be adjudicated insolvent, however small the amount of his estate or his liabilities. *In re* COCKING, 1905 Q.W.N. 20. [*Queensland.*]

—— **Statement as to coverture.**—A debtor's petition presented by a woman *held* sufficient though it did not state whether she were single or married. *In re* LAYTON, 1905 Q.W.N. 60. [*Queensland.*]

—— **Verification.**—The affidavit filed by a creditor verifying his petition ought not to be used at the hearing in support of the allegations of the petition, but such allegations must be proved by oral evidence. *In re* EWING; *Ex parte* MORGAN, 24 N.Z.L.R. 808. [*New Zealand.*]

—— **Objections.**—A creditor's petition must be verified on presentation. "File" and "present" are virtually synonymous terms in bankruptcy practice. Though a point is not taken in the objections filed, the Court must take notice of the objection if it is apparent on the face of the petition. Where a respondent succeeds on a point not taken in his list of objections costs will not be ordered against the petitioner. *Re* DAUNT; *Ex parte* MACINTYRE, 22 W.N. 169. [*New South Wales.*]

—— **Attestation—Amendment.**—A bankruptcy petition filed in Court was not attested in accordance with the provisions of sec. 31 of the Bankruptcy Act, 1892, although it was signed by the petitioning creditor in the presence of a solicitor. The Registrar refused to allow the petition to be amended by the solicitor's attesting it, and dismissed the petition. *Held*, that sec. 166 of the Bankruptcy Act, 1892, contemplates that irregularities which are immaterial may be rectified by the Court; that the defect in this case was formal only, and should be rectified under sec. 166 by allowing the solicitor in whose presence the petition was signed to attest the same. Order accordingly. *In re* HARRISON, 7 N.Z. Gaz. L.R. 11. [*New Zealand.*]

—— **Prayer—Amendment.**—A bankruptcy petition which omits the prayer that the debtor be adjudicated bankrupt is in fact no petition and cannot be amended. *In re* MULLAY, 8 N.Z. Gaz. L.R. 78. [*New Zealand.*]

—— **Hearing.**—It is the duty of the petitioning creditor to bring before the Court at the hearing evidence sufficient to justify the Court in finding either that the debt was unsecured, or that after a valuation of the security by the Court, as provided by sec. 37 of the Bankruptcy Act, 1892, the balance of the debt due is not less than £30, and unless the Court can find one of these things it ought not to make an adjudication. But a petition should never be dismissed where, through inadvertence or otherwise, an omission has been made in the evidence which can be at once rectified without injury to either party, and which when rectified will enable a right decision to be arrived at. *In re* EWING; *Ex parte* MORGAN, 24 N.Z.L.R. 808. [*New Zealand.*]

—— **Dismissal—Form of order.**—Where an order is made dismissing a creditor's petition, findings of fact should not be stated in the order. *Re* SHAH; *Ex parte* D. MITCHELL & Co., 22 W.N. 184. [*New South Wales.*]

BANKRUPTCY NOTICE—Joint creditors—Request for issue by one in name of both joint creditors.—One of several joint judgment creditors may apply in the name of all the creditors and without their concurrence for the issue of a bankruptcy notice. *Re* DARBY, 22 W.N. 87. [*New South Wales.*]

—— **Application to set aside.**—If an affidavit is filed under Rule 77 setting up a counterclaim, set-off or cross demand, the debtor may be allowed to take other objections to the bankruptcy notice, although he has not filed a notice of motion under Rule 78; but he will only be allowed to do so upon terms. *Re* H. X. BROWNE; *Ex parte* A. D. BROWNE and T. H. BROWNE, 22 W.N. 112. [*New South Wales.*]

SEQUESTRATION ORDER—Crimes Act, 1900 No. 40, sec. 467.—*See* CRIMINAL LAW.

—— **Setting aside.**—A sequestration order made on a debtor's own petition can only be set aside where the creditors have been paid 20s. in the pound, or where the order ought not to have been made. A sequestration order will not be set aside on the motion of creditors who have allowed a long interval of time to pass since the date of the order, and have in the meantime taken advantage of the order to prove in the bankruptcy and to obtain through the Official Assignee an examination under s. 30. *Re* MIMNA; *Ex parte* MINTER AND SIMPSON, 22 W.N. 166. [*New South Wales.*]

PROCEEDINGS AGAINST BANKRUPT.—Where there are no assets, where there is only one creditor, where that creditor's claim arises out of disgraceful conduct on the part of the bankrupt, the Court of Bankruptcy will allow proceedings against the bankrupt in another jurisdiction of the Court to continue. *Re* MIMNA; *Ex parte* MINTER AND SIMPSON, 22 W.N. 166. [*New South Wales.*]

OFFICIAL ASSIGNEES AND TRUSTEES—Sale by.—Property mortgaged by the appellant to the respondent bank was purchased by the bank in 1889 at a sale through the Registrar, at a price far below the amount owing under the mortgage. In 1896, the appellant petitioned to be made, and became, a bankrupt, in order to free himself from his legal liability for the balance due under the mortgage. In 1902, the Official Assignee by deed

assigned to the appellant all rights, claims and demands which the Official Assignee might have by virtue of the bankruptcy, against the bank and those claiming under it, in respect of the Registrar's sale of 1889 and the property comprised in the mortgage and purchased by the bank; and by this deed the appellant was constituted, and accepted the position of a trustee for the creditors in his bankruptcy (so far as their claims extend) in regard to the proceeds of an action to be brought by him to enforce such rights, claims, and demands. Sub-sec. (1) of sec. 65 of the Bankruptcy Act, 1892, empowers the assignee to sell all or any part of the property of a bankrupt by public auction or public tender, or, in the case of property which has been offered for sale by public auction or public tender and failed to be sold, then to sell by private contract. The assignment by the Official Assignee to the appellant was not in pursuance of a sale to the appellant by public auction or on public tender, nor had it been preceded by any offer for sale by public auction or public tender, nor did it purport to be in exercise of the power of sale given by sec. 65. *Held*, (1)—That the office of the Official Assignee being a creation of the statute, his whole powers, duties, and functions are derived from the statute and can be exercised only in pursuance of and in compliance with the provisions of the statute. (2). That the provisions of sub-sec. 1 of sec. 65 not having been complied with, the assignment to the appellant was *ultra vires* and void. Such sale is not champerty or maintenance. HAMILTON *v.* BANK OF NEW ZEALAND, 24 N.Z.L.R. 109; 7 Gaz. L.R. 277. [*New Zealand.*]

—— **Commission to assignee.**—The commission, or percentage which may, under sec. 4 (iii) of the Insolvency Act, 1903, be allowed to the assignee of an insolvent estate, is to be calculated on the net assets of the estate after all charges of realisation have been paid, and not on the whole fund available for payment and application under s. 123 of the Insolvency Act, 1890. *Re* O'NEILL, 1905 V.L.R. 64. [*Victoria.*]

—— **Payment to trustee—Gross assets exceeding £200.**—*See Re* GILPIN, 26 A.L.T. Supp. 6; 11 A.L.R. (C.N.) 53. [*Victoria.*]

—— **Proceedings by.**—*Per* Stout, C.J. (in the Supreme Court).—It is open to the Official Assignee to proceed by action, even if there is a remedy by proceedings under the bankruptcy. DAVIES AND OTHERS *v.* THE DEPUTY OFFICIAL ASSIGNEE OF DAVIES, 24 N.Z.L.R. 161; 7 Gaz. L.R. 262. [*New Zealand.*]

—— **Set-off in action by trustee.**—A being indebted to B on an overdue promissory note, endorsed and delivered to B a promissory note made by C in favour of A, B undertaking that he would, in consideration of an allowance of 2½ per cent., discount the promissory note of C, and pay the proceeds into the banking account of A, in order to enable A's overdue promissory note to be taken up. B did not discount the promissory note of C, but when it became due received payment of it from C. The overdue promissory note of A was paid otherwise, A having become insolvent. *Held*, by Holroyd and Hodges JJ. (Hood J., dissenting), that in proceedings by the trustee in insolvency of A to recover from B the amount of C's promissory note, less the discount, B was not entitled under sec. 121 of the Insolvency Act, 1890, to set-off against such amount a debt owing to him by B. *In re Pollitt* ([1893] 1 Q.B. 175, 455), and *In re Mid-Kent Fruit Factory* ([1896] 1 Ch. 567), followed. Under sec. 96 of the Insolvency Act, 1890, the Court of Insolvency has jurisdiction to entertain proceedings by the trustee to recover money owing to the insolvent under such circumstances as above stated. ATKINSON *v.* LEARMOUTH, 26 A.L.T. 233; 11 A.L.R. 191. [*Victoria.*]

MEETINGS OF CREDITORS—Liquidating resolutions—Registration.—Liquidating resolutions were passed at a first general meeting of creditors of which certain small creditors had had no notice. The resolutions were passed by a majority which would have been sufficient even if the creditors who received no notice had attended and opposed the resolutions. *Held*, nevertheless, that they were entitled to an opportunity of attending the registration of the resolutions. *In re* NUGENT, 1905 Q.W.N. 10. [*Queensland.*]

PROPERTY OF BANKRUPT—Grocer's license—Order and disposition.—Apart from property in the premises themselves, there can be no interest, transmissible to the trustee in insolvency, in a grocer's license held by an insolvent under the Licensing Act, 1890, and attached to premises in which the insolvent carried on his business. *Quære*, whether such a license is a *chose in action*. Inasmuch as a grocer's license, held by an insolvent but the property, in fact, of the lessor of the premises to which it is attached, is by virtue of the Licensing Act, 1890, subject to certain statutory rights in favour of the lessor as against the lessee, it cannot be treated as within the "order and disposition" provisions of the Insolvency Act, 1890. *In re* JACK; JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

—— **Married woman—Separate estate—Restraint on anticipation.**—*See* HUSBAND AND WIFE. *In re* FORSTER, 27 A.L.T. 129; 11 A.L.R. 500. [*Victoria.*]

—— **Estate of deceased—Executor carrying on business.**—An executor who at the request of the creditors carries on the business of his testator, is entitled to be indemnified out of the assets of the estate for liabilities incurred in so carrying on. Therefore, where the executor after carrying on such business for some time, voluntarily sequestrated the testator's estate. *Held*, that the assignee took the estate of the testator subject to such

indemnity, and that the indemnity should be made good out of the assets before they were applied to any other purpose. *Held, further,* that expenses which an executor might lawfully incur in winding-up the estate, *e.g.*, law costs, were in the same position. *Semble, per* Holroyd J., an executor is entitled as against the assignee to deduct the amount of liabilities incurred in so carrying on the business of his testator, from the assets in his hands before handing them over to the assignee. *In re* LEESON, 26 A.L.T. 173; 11 A.L.R. 59. [*Victoria.*]

——**Trust funds.**—An improperly appointed trustee speculated with the trust funds, investing them by taking up land on "perpetual lease," making the required statutory declaration that he did so solely for his own use and benefit. He made a profit on this, which he paid into his private account. A judgment being obtained against him, he was adjudicated a bankrupt. He claimed that the above-mentioned profits belonged to the trust estate, and paid into a trust account the whole money still remaining in his private account. *Held,* by Stout C.J., in the Supreme Court—That the Official Assignee was entitled to these moneys. *Held,* by the Court of Appeal (Williams, Denniston, and Cooper JJ.; Edwards and Chapman JJ. dissenting), That the *cestuis que trustent* who had been added as defendants could only succeed on the appeal by showing the decree was erroneous on its merits, or that they had a defence on the merits not brought before the Court: and that the added defendants were not necessary parties before the decree. DAVIES *v.* THE DEPUTY OFFICIAL ASSIGNEE OF DAVIES, 24 N.Z.L.R. 161; 7 Gaz. L.R. 262. [*New Zealand.*]

——**Void transactions—Settlement.**—Voluntary payments of money by an insolvent to his wife do not constitute a "settlement" within sec. 72 of the Insolvency Act, 1890, unless there are express conditions as to appropriation and investment. *In re* JACK; JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

——**Assignment of future profits.**—The rule that by no assignment can a bankrupt give a good title as against his trustee to profits of his business accruing after the commencement of his bankruptcy does not apply when at the time of the assignment the subject matter thereof is due, though not payable until a future time. ROBINSON *v.* PODOSKY, 1905 S.R. (Q.) 118; Q.W.N. 47. [*Queensland.*]

——**Powers of Official Assignee** as to.—*See Official Assignee, col.* 16.

——**Contractors' Debts Act—Effect of notice.**—L. commenced an action against the bankrupt to recover a sum for goods supplied; notice under sec. 14 of the Contractors' Debts Act was served on V., for whom the bankrupt was working under a contract. A subsequent notice under s. 7 that judgment had been obtained in the action was served on V., but prior to that the bankrupt had committed an act of bankruptcy of which L. had notice; the bankrupt subsequently voluntarily sequestrated his estate. *Held,* that the first notice under the Act had the effect of an interlocutory injunction until the hearing and ceased to be operative on judgment; and that the second notice was an attachment which was not completed by receipt of the debt before notice of an available act of bankruptcy and was therefore void. *Re* DOSSI, 5 S.R. 204; 22 W.N. 58. [*New South Wales.*]

——**Examination of insolvent.**—Under the circumstances of the case the Court directed an examination of the insolvent and others as to the trade dealings and property of the insolvent on the application of certain creditors being less than one-fourth of the creditors in number and value, though the trustees stated that the examination was not necessary. *In re* GILPIN, 26 A.L.T. Supp. 9; 11 A.L.R. (C.N.) 42. [*Victoria.*]

——**Jurisdiction—Declaration as bankrupt's estate.**—Sec. 5, sub-sec. 1, of the Insolvency Act, 1897 (Victoria), confers upon the Insolvency Court jurisdiction, to the amount indicated in sub-sec. 2, to adjudicate upon a motion by a trustee in insolvency for a declaration that property, claimed by a third person, forms part of the insolvent's estate. *Anthoness* v. *Anderson* (14 V.L.R. 127), approved. *In re* JACK; JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

—— **Motion to recover assets.**—The normal mode of trial of proceedings under s. 134 of the Bankruptcy Act is by the Judge without a jury, and the Court will not in the absence of special circumstances where the application is opposed direct that the issues of fact arising in any proceedings be tried by a jury. *Re* ALLEN, 5 S.R. 55; 22 W.N. 47. [*New South Wales.*]

Costs may be ordered against an infant respondent to a motion under s. 134, but only where such respondent has been guilty of fraud or misconduct. *Re* HOOK, 5 S.R. 216; 22 W.N. 45. [*New South Wales.*]

Where an infant respondent to a motion under s. 134 of the Bankruptcy Act, 1898, does not appear by a guardian *ad litem,* the moving party may, within seven days after service of an order directing the respondent to appear by guardian, either enter an appearance for such respondent by a guardian nominated by such moving party, or proceed with his motion as if it were undefended. Form of notice of motion to be used on an application calling upon a respondent to appoint a guardian approved. *Re* HOOK, 22 W.N. 45. [*New South Wales.*]

—— **Evidence.**—A trustee in insolvency who, on a motion asserting that property claimed by the insolvent's wife forms part of

the insolvent estate, relies solely upon the respondent's previous deposition on an examination summons, is bound by the deposition as a whole, and is not entitled to select parts of it as supporting the application, and to reject the rest. In such a case, even apart (where they apply) from the provisions of sec. 13 of the Married Women's Property Act, 1890, relative to deposits in savings banks, the onus of proof is on the trustee, and mere suspicion that the respondent's statements are untrue is not enough to justify a decision for the trustee. JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

PROOF OF DEBT—Going behind judgment.—Though, in bankruptcy, the consideration of a judgment debt, which is sought to be proved, may be inquired into, the Court will not reject the proof unless there is some element of fraud or absence of consideration; and the Court will not readily go behind a judgment if it was given on the merits, and after a contest between the parties. *In re* SULLIVAN, 7 N.Z. Gaz. L.R. 376. [*New Zealand.*]

—— **Payments under separation deed.**—Weekly payments payable in the future by a husband to his wife for her maintenance, under a separation deed, are debts provable in bankruptcy, under sub-sec. 3 of sec. 98 of the Bankruptcy Act, 1883. *Ex parte Neal; In re Batey* (14 Ch. D. 579), followed. The value of such a debt or liability may be estimated under sec. 109. *In re* BECK; *Ex parte* BECK, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104. [*New Zealand.*]

Quære, whether amounts payable in the future under an order made under the Destitute Persons Act, 1894, which amounts are to be payable only until the order is discharged or varied, are a debt provable in bankruptcy. If they are, the debt is one the value of which is incapable of being fairly estimated, and therefore comes within sub-sec. 3 of sec. 109 of the Bankruptcy Act, 1883. *In re* BECK; *Ex parte* BECK, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104. [*New Zealand.*]

—— **Wife—Partnership.**—Partnership is a personal relationship, and where a husband is nominally a partner with another person, but in reality merely an agent for his wife in such partnership, this does not constitute the wife a partner and disentitle her to claim against the partnership assets. However, under such circumstances it was *held* that the husband was entitled to an indemnity from his wife against all partnership losses and debts, and that the benefit of such indemnity passed on bankruptcy to the Official Assignee. *In re* WILTSHIRE AND SCOTT; *Ex parte* SCOTT, 24 N.Z.L.R. 354; 7 Gaz. L.R. 378. [*New Zealand.*]

—— **Release.**—A and B made a joint and several promissory note in favour of C. The estate of A having been assigned for the benefit of his creditors, C put in a proof of debt in respect of the promissory note. On an appeal to the Court of Insolvency against the rejection of this proof of debt, C in giving evidence said on cross-examination, "At a meeting of creditors of B, I agreed to take ten shillings in the pound. I believe other creditors also agreed to take ten shillings in the pound." *Held*, that there should be implied from this evidence that C and some other of the creditors of B effectually agreed with B to accept his promise to pay each of them ten shillings in the pound of the amount of his debt in discharge of the whole amount of such debt, the consideration for the agreement by each creditor being the mutual agreement by all of them. *Held*, therefore, that, notwithstanding B had never paid ten shillings in the pound of the amount due on the promissory note, the liability of B and consequently that of A, in respect of the promissory note was discharged, and that the proof of debt made by C was properly rejected by the trustee. *In re* PEARSE; *Ex parte* BRENTNALL, 1905 V.L.R. 446; 26 A.L.T. 243; 11 A.L.R. 249. [*Victoria.*]

——**Priority of proof.**—*See Distribution of Estate, col.* 22.

—— **Appeal from rejection of proof.—R. 241 (2).**—*Quære*, whether r. 241 (2) of the Insolvency Rules in limiting to fourteen days the time for appeal from the rejection of a proof is *ultra vires*. *In re* PEARSE; *Ex parte* BRENTNALL, 1905 V.L.R. 446; 26 A.L.T. 243; 11 A.L.R. 249. [*Victoria.*]

DISTRIBUTION OF ESTATE—Assets and creditors in two States.—*Re* SIDDALL, 27 A.L.T. Supp. 6; 11 A.L.R. (C.N.) 62. [*Victoria.*]

—— **Preferential creditor—Crown debt.**—In the administration of the assets of a bankrupt the Crown is not entitled to priority over other creditors. *Re* MARTIN, 5 S.R. 181; 22 W.N. 62. [*New South Wales.*]

—— **Wife—Order under Destitute Persons Act.**—The words of sec. 24 of the Destitute Persons Act, 1894, "shall have priority over all other liabilities," were not designed to destroy the priorities that are given in bankruptcy under the Bankruptcy Act, 1883, nor was it intended that there should be a priority in bankruptcy for what is under such an order a contingent debt. It may be, however, that (if the section applies to the case of a wife at all) she is entitled to priority for any sum that may have actually become due to her and to her children up to the time of the bankruptcy. *In re* BECK; *Ex parte* BECK, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104. [*New Zealand.*]

DISCHARGE—Evidence.—On an application for certificate of discharge evidence is required (1) that the insolvent has given up to his creditors all the property which he is bound to give up; (2) that no prosecution is pending

against him as a fraudulent debtor. *In re Lewis* (1903 Q.W.N. 65), followed. *In re* FRENCH, 1905 Q.W.N. 55. [*Queensland.*]

RELEASE OF ESTATE.—Even though a bankrupt pays his creditors in full or obtains a legal acquittance of the debts due to them, the Court may refuse to grant him an order for the release of his estate if his conduct has been such as to merit refusal of a certificate of discharge. *Re* BULLOUGH, 22 W.N. 189. [*New South Wales.*]

ARRANGEMENT AND ASSIGNMENT DEEDS—As an act of bankruptcy.—*See Act of insolvency, col.* 14.

——**Proof by party to deed.**—*See Proof of debt, col.* 21.

——**Costs—Scale of solicitor's, on a deed of assignment.**—*In re* POWER, 26 A.L.T. Supp. 10; 11 A.L.R. (C.N.) 37. [*Victoria.*]

ATTACHMENT of bankrupt—Enforcing claim by Official Assignee.—A bankrupt refused to hand over a policy of insurance to his Official Assignee, claiming that he held it on trust for his children. Upon an application to attach him, the bankrupt undertaking to lodge the policy in Court, and the official assignee undertaking to bring proceedings under s. 134 to enforce his claim within five months, no order was made upon the application, costs being reserved. *Semble,* the Court will not allow its powers to be used in such a case to enforce the claim of the Official Assignee. *Re* FERRIS, 22 W.N. 44. [*New South Wales.*]

—— **Discharge from custody.**—A judgment debtor, who had been arrested under a writ of *ca. sa.* issued out of the District Court, sequestrated his estate as bankrupt and applied for his discharge out of custody. *Held,* that notwithstanding that the debt had been incurred by fraud the debtor was entitled to an unconditional discharge from custody. Principles guiding Court in discharging debtors out of custody after sequestration of their estates discussed. *Re* HUNTINGDON, 5 S.R. 48; 22 W.N. 1. [*New South Wales.*]

——**In defamation.**—Relief from arrest under *ca. sa.* of judgment debtor in defamation *See* ARREST. FERRIS *v.* MARTIN, 2 C.L.R. 525; 11 A.L.R. 470; 5 S.R. 287; 22 W.N. 52, 90. [*New South Wales.*]

——**Form of notice of motion** to dissolve attachment. Affidavit in support. Insolvency Act, 1890, sec. 16—Insolvency Rules, 1898, r. 19. *In re* TURNLEY, 26 A.L.T. Supp. 9.; 11 A.L.R. (C.N.) 37. [*Victoria.*]

APPEAL—District Court Registrar.—Any order made or act done by the Registrar of the District Court in the exercise of his powers, jurisdiction, and authority under the Bankruptcy Act, 1892, is by sec. 15 of that Act deemed to be the order or act of the Court, and an appeal will lie from such order or act to the Supreme Court. *In re* EWING; *Ex parte* MORGAN, 24 N.Z.L.R. 808. [*New Zealand.*]

—— **From rejection** of proof.—*See Proof of debt, col.* 21.

—— **From Registrar.**—Where the Registrar has jurisdiction, co-ordinate with that of the Judge, the Judge cannot give an appellant from the Registrar leave to use additional evidence on the hearing of the appeal: if in such a case an application to the Registrar is refused and additional evidence becomes available, application should be made to the Registrar to receive the additional evidence and review his former decision. *Re* HILL, 22 W.N. 117. [*New South Wales.*]

——**Added defendants.**—*See Property of Bankrupt.* DAVIES *v.* DAVIES (Official Assignee), 24 N.Z.L.R. 161; 7 Gaz. L.R. 262.

OFFENCES—Expenses of prosecution—Insolvency Act, 1874, s. 218.—Under s. 218 of the Insolvency Act, 38 Vic. No. 5, the Crown does not incur any liability for costs incurred before the order for prosecution is made. *In re* WRIGHT, 1904 Q W.N. 84. [*Queensland.*]

BASTARD.

Adoption of Children Act.—An illegitimate child who, under the Adoption of Children Act, 1881, as amended by the Amending Act of 1885, was adopted by a married woman with the consent of her second husband, died intestate after the death of the adopting parents, leaving him surviving his natural mother and the son of his adopting mother by her first husband. *Held,* that by s. 6 of the Adoption of Children Act, 1881, the rights of the natural mother terminated on the adoption, and that the surviving son was by virtue of s. 8 of the said Act, the half brother of the deceased, and entitled to his estate as his next of kin. *In re* CARTER, 7 N.Z. Gaz. L.R. 577. [*New Zealand.*]

Affiliation.—*See* DESERTED WIVES AND CHILDREN.

BETTING.

See GAMING AND WAGERING.

BILLS OF EXCHANGE.

Promissory note—Endorsement.—A person who endorses a promissory note not complete and regular cannot be sued as endorser, but may become liable as a joint promisor. A

promissory note drawn by Tu Tan in favour of the plaintiff company, and payable to its order, was endorsed by the defendant and one J. At the time these endorsements were placed upon it the plaintiffs had not accepted the note, and their signature was not upon it. The bill was dishonoured, no notice being given to the defendant until some six weeks after the date of maturity, and then the only notice given was in a letter of demand mentioning that the bill had been dishonoured, sent by the plaintiff's agent to defendant. In an action in the local Court judgment was given for the plaintiffs. Defendant appealed on the ground that no notice of dishonor was given, and that the promissory note was not complete and regular on its face. *Held*, the note not having been first endorsed by the person to whom it was made payable was not a complete and regular note. (*Jenkins* v. *Coomber* ([1898] 2 Q.B. 168), applied.) The defendant could not be sued as an endorser, but was liable as a joint promisor. FREEDMAN & Co. *v.* DAN CHE LIN, 7 W.A.L.R. 179. [*Western Australia.*]

Liability of endorser—Caveat against registration of bill of sale.—*See* BILL OF SALE. *In re* SWIFT'S CAVEAT, 26 A.L.T. Supp. 2. [*Victoria.*]

BILL OF SALE.

After-acquired property.—After acquired property cannot be the subject of assignment at law, and therefore a purchaser from the assignee though without notice cannot get title. NATIONAL MORTGAGE AND AGENCY CO. OF NEW ZEALAND *v.* MORGAN, 26 A.L.T. Supp. 4; 11 A.L.R. (C.N.) 29. [*Victoria.*]

Holder permitting grantor to continue in business.—*See* ESTOPPEL. NATIONAL MORTGAGE AND AGENCY CO. OF NEW ZEALAND *v.* MORGAN, 26 A.L.T. Supp. 4; 11 C.L.R. (C.N.) 29. [*Victoria.*]

Registration—Renewal.—The time for renewal of registration of a bill of sale having elapsed, an order for leave to renew registration was made without prejudice to the rights of any other parties acquired prior to the actual renewal of registration. The plaintiff in ignorance of the bill of sale, supplied goods to the defendant, the giver of the bill of sale, some of the goods being supplied while the bill of sale remained unregistered, and some after renewal. After the renewal he recovered judgment and issued execution against the defendant for the price of the goods. The bill of sale holder having claimed the property comprised in the bill of sale, was *held* entitled to succeed on interpleader. THOMAS BROWN & SONS, LTD. *v.* GOODWIN, 1905 Q.W.N. 16. [*Queensland.*]

—— **Form of order.**—Conditions laid down upon which an order should be made extending the time for registering, or renewing the registration of an instrument under the Chattels Transfer Act, 1889; and form of order prescribed with the concurrence of the Judges of the Supreme Court. *In re* CHATTELS TRANSFER ACT, 7 N.Z. Gaz. L.R. 464. [*New Zealand.*]

—— **Caveat against, by endorser of promissory note.**—The liability of the endorser of a promissory note payable on demand, *held*, in the absence of evidence of demand, and notice of dishonour, a mere contingent liability, and not a debt entitling the holder to caveat against the filing of a bill of sale by the endorser. *In re* SWIFT'S CAVEAT, 26 A.L.T Supp. 2. [*Victoria.*]

BILLIARDS.

Controlling billiard rooms.—*See* MUNICIPALITY. TWOHILL *v.* FAIRHALL, 24 N.Z. L.R. 535; 7 Gaz. L.R. 211. [*New Zealand.*]

BOND.

See DEED AND BOND.

BOOKMAKER.

Legality of calling.—The business of a bookmaker is not illegal. SOLOMON *v.* KENDALL, 26 A.L.T. Supp. 1. [*Victoria.*]

Slander on.—*See* DEFAMATION.

BOROUGH.

See MUNICIPALITY.

BREACH OF PEACE.

See VAGRANCY.

BREAD.

Light weight.—On an information under sec. 6 of Act No. 1332 it must be shown that all the loaves weighed were taken into consideration as a whole, and if it appear that the average of all such loaves is up to the standard weight, no offence is proved. GRAHAM *v.* REITH, 1905 V.L.R. 541; 27 A.L.T. 37; 11 A.L.R. 301. [*Victoria.*]

The fact that bread on the premises of a baker appears to be deficient in weight, when weighed in scales which though used by the baker are not scales which he is required by

law to have correct, is no evidence that the bread is not of due weight according to the standard weight by law established. GABRIEL *v.* SMITH, 1905 S.R. (Q.) 106; Q.W.N. 44. [*Queensland.*]

BUILDING CONTRACT.

Authority of architect.—*See* PRINCIPAL AND AGENT. HYNE *v.* PODOSKY, 1905 S.R. (Q.) 147; Q.W.N. 53. [*Queensland.*]

BY-LAW.

Publication—Reasonableness.—*See* RAILWAYS. SMITH *v.* COMMISSIONER FOR RAILWAYS, 7 W.A.L.R. 1. [*Western Australia.*]

And *see* LOCAL GOVERNMENT—MUNICIPALITY.

CAMPBELL'S (LORD) ACT.

See MASTER AND SERVANT. KELLY *v.* FAKE, 24 N.Z.L.R. 547; 7 Gaz. L.R. 381. [*New Zealand.*]

CAPIAS AD RESPONDENDUM.

See ARREST.

CAPIAS AD SATISFACIENDUM.

See ARREST.

CARRIER.

Contract—Pregnancy—Dangerous illness.—One of the conditions of a contract for the carriage of passengers by sea from Port Adelaide to Fremantle provided that no person "dangerously ill" could be received on board. *Held*, by Way C.J., and Boucaut J. (Gordon J. dissenting), that pregnancy might amount to illness within the terms of the condition, so as to give the carrier a discretionary power to decline to receive a passenger; and that, therefore, there was evidence to justify a finding of the local Court in favour of the defendants. DE PLEDGE *v.* AUSTRALASIAN UNITED STEAM NAVIGATION COMPANY, LIMITED, 1904 S.A.L.R. 61. [*South Australia.*]

Wharfinger.—Where a wharfinger carries goods for a fixed charge along a jetty, of which he is lessee, to his warehouse, and there gives delivery, his liability is that of a common carrier, and it is not necessary to prove negligence against him to substantiate a claim by consignee of goods for damage done thereto. BASTON *v.* DALGETY & CO., LTD., 7 W.A.L.R. 195. [*Western Australia.*]

And *see* RAILWAYS.

CATTLE SLAUGHTERING.

See SLAUGHTERING.

CATTLE TRESPASS.

Selling without impounding.—M, a constable was complained against by B, for selling a horse without having impounded it in a public pound, as required by the Cattle Trespass, Fencing and Impounding Act, 1882. M took the horse from X's paddock, having found it there in a starving and dying condition. Not having been able to find an owner, he obtained an order provided for by the above Act, and sold. *Held*, that since the horse was not trespassing no proceedings could be taken against M for breach of the Act. BRYDON *v.* MURRAY, 7 W.A.L.R. 186. [*Western Australia.*]

CERTIORARI.

Notice to justices.—The Full Court refused to grant an application for *certiorari* on the ground that the notices required by 13 Geo. II. c. 18, sec. 5, had not been given. *Ex parte* WEEKES, 5 S.R. 465; 22 W.N. 146. [*New South Wales.*]

Service of notice of motion.—Where prompt personal service could not be effected of a notice of motion for a writ of *certiorari*, and the defendant had left the colony, an order was made to effect service upon the defendant by substituting service upon his agent within the colony for personal service upon himself. *Held*, upon a motion to review and discharge such order, that substituted service had been properly directed. A notice of motion for a writ of *certiorari* is an originating process and must be served personally; but where such notice of motion cannot be served personally, then the Court or a Judge has power, under rule 567, to make an order as nearly as may be in accordance with the practice prescribed by the code in relation to an analogous case, and a writ of summons, issued as the commencement of an ordinary action, is in the above instance a similar case. WILSON *v.* HARRIS, 24 N.Z.L.R. 730; 7 Gaz. L.R. 439. [*New Zealand.*]

CHAMPERTY.

Per Stout C.J. (in the Supreme Court):—A sale by the Official Assignee to the bankrupt as the bankrupt had an interest in the subject-matter as a bankrupt after payment of his creditors, was not champertous or maintenance. HAMILTON *v.* BANK OF NEW ZEALAND, 24 N.Z.L.R. 109; 7 Gaz. L.R. 277. [*New Zealand.*]

CHARGING ORDER.

See EXECUTION.

CHARITY.

Rectification of deed.—Rectification of a deed of trust under which land was held for charitable purposes by the insertion of a general power to the trustees to sell was refused, there being no evidence that the absence of such power was due to inadvertence; rectification was, however, granted by the insertion of a general power to the trustees to mortgage the land for the purposes of the trust with the consent of the members of the charity expressed by resolution at a meeting convened in accordance with the provisions contained in the deed of trust. *In re Smidmore's Charity* (18 W.N. 146), and *In re Albion Park Agricultural, &c. Association* (19 W.N. 237), distinguished on one point. *Re* BURGE'S CHARITY, 22 W.N. 175. [*New South Wales.*]

Defunct charity—Disposition of funds.—A charitable fund raised by a society for the rescue of fallen women, ordered, after such society had become defunct, to be handed over to another society with similar objects. Considerations influencing the Court in the choice of such similar society discussed. *In re* AUCKLAND WOMEN'S HOME TRUSTS, 7 N.Z. Gaz. L.R. 406. [*New Zealand.*]

Charitable purposes—Meaning of—Local Government Act, 1890, s. 246.—*See* THE TRUSTEES OF QUEEN'S COLLEGE *v.* THE MAYOR, &C., OF THE CITY OF MELBOURNE, 1905 V.L.R. 247; 26 A.L.T. 191; 11 A.L.R. 103. [*Victoria.*]

Exemption from duty on bequest to.—*See* STAMP DUTIES. *In re* DECEASED PERSONS ESTATES DUTIES ACT, 8 N.Z. Gaz. L.R. 46. [*New Zealand.*]

Hospital and Charitable Institutions Act.—*See* HOSPITAL AND CHARITABLE INSTITUTIONS ACT.

Charitable devise.—*See* WILL.

Charitable Trusts.—*See* TRUSTS.

CHATTELS TRANSFER

See BILL OF SALE.

CHILDREN'S PROTECTION ACT.

Relinquishment of custody—Furnishing false particulars.—A person may be liable for furnishing false particulars of the relinquishment of custody of a child under sec. 16 of the Childrens' Protection Act, 1902, although such custody has not in fact been relinquished. DAY *v.* SMITH, 22 W.N. 110. [*New South Wales.*]

Prosecution of offences.—The provision of sec. 3 of the Children's Protection Act, 1890, that any person committing an offence under the section shall be liable to certain punishments "on conviction thereof in a summary way" necessarily incorporates the ordinary procedure for the prosecution of offences determinable summarily; and if sec. 12 of the same Act does not incorporate that procedure in a case under sec. 3, there is nothing in sec. 12 to exclude its application in such a case. THOMPSON *v.* GREY, 24 N.Z.L.R. 457; 7 Gaz. L.R. 136. [*New Zealand.*]

Control of child.—Sec. 3 of the Children's Protection Act, 1890, is not confined in its operation to parents or other persons having the legal guardianship of a child; and where the woman had the actual control of a child of her husband's sister, as if it was one of her own children. *Held*, that she had the "control" of it within the meaning of sec. 3, THOMPSON *v.* GREY, 24 N.Z.L.R. 457; 7 Gaz. L.R. 136. [*New Zealand.*]

CHOSE IN ACTION.

Grocer's license.—*See* BANKRUPTCY AND INSOLVENCY. *In re* JACK; JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

CHRISTCHURCH RACE-COURSE RESERVE.

See PUBLIC RESERVES.

CHURCH.

Religious trusts.—*See* TRUSTS.

CIVIL SERVICE.

See PUBLIC SERVICE.

CLUB.

Licensing Act, 1890—Servant.—*See* LICENSING. GRAVES *v.* WILLIAMS, 1905 V.L.R. 215; 26 A.L.T. 189; 11 A.L.R. 98. [*Victoria.*] *See also* NUISANCE—UNCLASSIFIED SOCIETIES REGISTRATION.

COAL MINE.

Air supply.—A mine must be kept supplied with the minimum quantity of pure air specified by the latter portion of r. 1 of sec. 47 of the Coal Mines Regulation Act, during temporary cessations of work, *e.g.*, during holidays and Sundays, and not only whilst men are actually engaged in winning coal. WATSON *v.* BROUGHALL, 22 W.N. 157. [*New South Wales.*]

State coal mine.—*See* STATE COAL MINE.

COMMISSION AGENT.

Commission—Consideration.—*See* CONTRACT. COLLINS *v.* WARD, 26 A.L.T. Supp. 2. [*Victoria.*]

COMMONS REGULATION ACT.

Liability of trustees for failure to destroy rabbits.—*See* PASTURES PROTECTION. SELF *v.* MCMAHON, 22 W.N. 188. [*New South Wales.*]

COMMONWEALTH.

See FEDERAL LAW.

COMPANY.

MEMORANDUM OF ASSOCIATION—Ultra vires—Sale of undertaking.—The memorandum of association of a dairy company stated, as one of the objects for which the company was established—"(4) The selling, demising, mortgaging . . . . of the real and personal property of the company . . . ." But the company had no express power to sell its "undertaking." The company entered into an agreement with another company to sell to the latter the whole of its property, real and personal, including the goodwill of its business, and its uncalled capital, and undertook to call up the balance of its capital and pay it over to the purchasing company. In pursuance of this agreement a call was made, but the respondent resisted payment, and the question was whether the agreement was *intra vires* of the company. *Held*, that sec. 4 of the objects of the company was not wide enough to enable the company to dispose of the whole of its assets, and to pass out of existence, and, as there was no express power to sell the "undertaking" of the company, the agreement was *ultra vires*, and the call could not be recovered. REWA CO-OPERATIVE DAIRY CO. *v.* LONERGAN, 8 N.Z. Gaz. L.R. 100. [*New Zealand.*]

—— **Power of purchase.**—*See In re* WICKHAM AND BULLOCK ISLAND COAL CO., 5 S.R. 365; 22 W.N. 109, *col.* 35.

REGISTRATION—Certificate—Foreign company.—*See* EVIDENCE. BOWDEN BROS. *v.* IMPERIAL MARINE AND TRANSPORT CO., 22 W.N. 195. [*New South Wales.*]

DIRECTORS—Debts due from company—Security—Interest.—The directors of a company can take security from the company for amounts owing by the company to them, including their fees as directors due and owing to them by the company at the date of taking the security. Where the directors of a company personally guarantee an overdraft obtained by the company, they can charge the company with such a commission on the amount guaranteed as might have been charged if the guarantee had been by strangers to the company, and they can take security from the company for the amounts due and owing to them for such commission. An agreement made between a company and its directors that compound interest shall be payable upon amounts advanced by and owing to the directors is valid and binding upon the company. *In re* F. W. MADDOX & CO., 24 N.Z.L.R. 782. [*New Zealand.*]

——**Director taking commission.**—*See* INSURANCE. GLISSAN *v.* CROWLEY, 5 S.R. 219; 22 W.N. 100; *but see* 2 C.L.R. 744. [*New South Wales.*]

REDUCTION OF CAPITAL—Addition to the name of words "and reduced"—Bank—Practice.—Where a banking company applied to the Court to sanction a reduction of its capital the Court dispensed with the addition of the

words " and reduced " to the name of the company. *In re* AUSTRALIAN JOINT STOCK BANK, 5 S.R. 44 ; 21 W.N. 210. [*New South Wales.*]

SHARES—Lien.—Shares in a company owned by A and B jointly were registered in the name of the firm. The firm having been dissolved A subsequently became indebted to the company. A transfer signed by A and B to a third party was then tendered to the company for registration, but the company refused to register it, as they claimed under article 37 of their articles of association a lien on the shares for the debt owing by A to the company. The article was as follows :— " The company shall have a first and paramount lien upon all the registered shares and registered stock of each member for his debts, liabilities, and engagements, solely or jointly with any other person, to or with the company whether the period for the payment, fulfilment, or discharge thereof shall have actually arrived or not." *Held*, that the article did not give the company the lien they claimed, and that the lien was confined to the shares of the individual who was indebted to the company. *In re* THE SOUTHLAND FROZEN MEAT COMPANY, LIMITED, 24 N.Z.L.R. 734 ; 8 Gaz. L.R. 77. [*New Zealand.*]

—— **Share certificate—Estoppel—Purchaser without notice—Damages.**—Where shares in a limited company are purchased from a person having no title thereto, on the faith of a certificate issued by the company that the vendor is the duly registered holder thereof, the purchaser is entitled as against the company to damages, and also to retain all dividends paid to him before he receives notice that the company refuses to recognise his title to the shares. Where the value of such shares has appreciated since the purchase the measure of damages is the market value of the shares on the date when the company first gave the purchaser notice to the above effect. On the 24th October, 1900, M., a lunatic, executed a power of attorney in favour of his wife. On Nov. 2., V., a stock and share broker, acting under instructions from M.'s wife agreed to sell to D., a broker acting for the defendant, 50 shares in the plaintiff company, of which M. was then the registered owner. The sale was for forward delivery on the 21st Jan., 1901. On Nov. 14, the shares were transferred to V., and on Nov. 15, certificates were issued to V., by the plaintiff company certifying that he was the registered owner of the shares. On 21st Jan., 1901, V. executed transfers of the shares to the defendant who became registered as holder thereof. Subsequently the plaintiff company issued 32 new shares and paid the proceeds of the sales of the fractional parts of other new shares to the defendant in respect of the original 50 shares. On 22nd Aug., 1904, M., having recovered his sanity, the plaintiff company in obedience to a decree of the High Court rectified its register by restoring the name of M. as the registered holder of the 50 shares, and the 32 new shares issued in right thereof, and paid to M. all dividends declared thereon since the removal of his name from the register, and also a sum equal to that paid to the defendant representing the fractional parts of new shares above mentioned. The plaintiff company now sued the defendant for the return of the scrip for the 82 shares, and for the repayment of the dividends and the other moneys paid as aforesaid. The defendant counterclaimed for damages. On the evidence the Court found that the defendant was a purchaser for value without notice of M.'s title or insanity, and that he completed the purchase and paid his money largely on the faith of the certificates issued to V. *Held*, that the plaintiff company while entitled to return of the scrip of the 82 shares was estopped by the issue of the certificates to V. from claiming a return of the dividends or of the proceeds of the sale of fractional parts of new shares. *Held, also*, that the defendant was entitled to damages, and that the measure of damages was the market value of the 82 shares on the date when the plaintiff company first refused to recognise the defendant as a shareholder with interest at £4 per cent. per annum from that time until date of payment. *Re Bahia and San Francisco Railway Co.* (L.R. 3 Q.B. 584), followed and applied. DAILY TELEGRAPH NEWSPAPER CO. *v.* COHEN, 5 S.R. 520 ; 22 W.N. 172. [*New South Wales.*]

—— **Rectification of register—Liquidation—Delay.**—Notwithstanding that liquidation has supervened, the Court may rectify the list of contributories and the register of shareholders upon any of the grounds mentioned in sec. 232 of the Companies Act. Where directors assent to a transfer of shares, it is the duty of the company to register the transfer forthwith ; failure to do so is " default and unnecessary delay " on the part of the company within sec. 232 of the Act. Consideration of the circumstances under which delay is fatal to an application to rectify a share register. In 1893, B was the registered holder of 600 shares in a company which shares he held as trustee for S, as was well known to the directors and officers of the company. On Sept. 11th, 1893, B transferred the shares to S, and the transfer was lodged for registration on the same day and was approved of a meeting of directors, though calls were then due on the shares which had since been paid. S was chairman of the meeting and informed B that the transfer had been approved by the Board and that it was " all right." No alteration in the register of shareholders was, however, made. From that time up to 1900, calls were made, but B received no notice of the calls in respect of these shares, though he did receive notices in respect of other shares held by him. In 1900 B learnt for the first time from a letter from the manager of the company that his name was still on the register, and he wrote protesting. No other action was taken by him and no action was taken by the company until 1904, when the

company went into voluntary liquidation, and the liquidator placed B on the list of contributories. The letter from the manager above referred to stated as a reason for the transfer not having been registered that no transfer had or could have been registered since 1894, because of a scheme of arrangement sanctioned at that date. B applied to have his name removed from the register and list of contributories. *Held*, that B's name should have been removed from the register on Sept. 11, 1893, and must now be removed from the list of contributories, and from the register as from that date; that B was not precluded from that relief by reason of the scheme of arrangement or any delay. By consent of S his name was substituted for that of B. *In re* COLONIAL FINANCE, MORTGAGE, &c., CORPORATION, 5 S.R. 506; 22 W.N. 179. [*New South Wales.*]

—— **Calls—Statute of Limitations—Specialty.**—The articles of association of a company provided that "any member whose shares shall be forfeited, shall, notwithstanding, be liable to pay to the company all calls or instalments, interest and expenses owing upon such shares at the time of such forfeiture." The defendant had been the owner of shares in the company, but his shares had been forfeited for non-payment of calls. *Held*, that the Statute of Limitations begins to run at the date of the forfeiture. *Quære*, whether the debt in respect of such calls and interest is a specialty debt within sec. 16 of the Companies Act, 1890. GILLESPIE & Co. *v.* REID, 1905 V.L.R. 101; 26 A.L.T. 154; 11 A.L.R. 12. [*Victoria.*]

ACTIONS—Security for costs by foreign company.—*See* COSTS. WILFLEY ORE CONCENTRATOR SYNDICATE *v.* N. GUTHRIDGE, LTD., 27 A.L.T. 70; 11 A.L.R. 333. [*Victoria.*]

WINDING UP—"Just and equitable"—Failure of substratum.—A company was formed with the object of acquiring and working a particular coal bearing property, and also of purchasing, taking on lease or exchange or otherwise acquiring other lands, &c., in New South Wales or elsewhere; there were also other objects clearly ancillary. The particular colliery having been worked out, the directors proposed to purchase further lands, believed to be coal bearing in another district, some 35 miles from the old mine, and this proposal was approved by a majority of the shareholders. Upon a petition to wind up the company, *held*, that the proposed purchase was *intra vires* the company, and that therefore the substratum of the company had not failed. *Re Coolgardie Consolidated Coal Mines, Limited* (76 L.T. 269), applied. *In re* WICKHAM AND BULLOCK ISLAND COAL COMPANY, 5 S.R. 365; 22 W.N. 109. [*New South Wales.*]

—— **Mining company.**—In the case of a voluntary winding-up of a mining company, the shareholders cannot take the management of the affairs of the company out of the hands of the directors, and place it in the hands of a liquidator. The meeting of shareholders which determines that the company is to be wound up, should also by resolution determine what course the directors are to pursue, and the mode in which they are to dispose of the surplus property. GREAT CENTRAL FREEHOLD MINES *v.* BRANDON, 1905 V.L.R. 97; 26 A.L.T. 146; 11 A.L.R. 69. [*Victoria.*]

—— **Bankruptcy Act (1898 No. 25), s. 77—Indemnifying creditor—Examination.**—The provisions of s. 77 of the Bankruptcy Act, 1898, are, by sec. 264 of the Companies Act, made applicable to a winding-up under that Act, but an examination held under sec. 123 of the Companies Act is not litigation within the meaning of the section of the Bankruptcy Act. *In re* SHADLER, 5 S.R. 33; 21 W.N. 217. [*New South Wales.*]

—— **Assets.**—In the liquidation of a company having surplus assets to distribute, the holders of shares issued fully paid, and the holders of shares paid up to face value, are entitled to be paid the difference between the amount of their shares and the amount contributed by the other shareholders, together with interest, before all the shareholders can rank *pari passu*. In such a case the holders of vendor's shares must be considered to have made an advance to the company, but have no right to priority over the holders of other fully paid shares. *Exchange Drapery Co.* (38 Ch. Div. 172), followed. *In re* WOOD & SONS, LIMITED, 7 N.Z. Gaz. L.R. 486. [*New Zealand.*]

The articles of association of a company contained the following clauses:—"166. Members holding fully paid up shares in the company shall not be contributories within the meaning of the Act, and no call shall be made for the purpose of adjusting the rights of members holding fully paid-up and partly paid-up shares respectively. 167. If the company shall be wound up, the assets available for distribution among the members shall be distributed in proportion to the capital paid up or credited as paid up on the shares held by them respectively; but these two clauses are to be without prejudice to the holders of shares issued under special conditions." Of the shares in the company that were issued, 2000 were fully paid up to £1, 3000 were paid up to 10s., and 18,100 were paid up to 6s. 6d. The company went into voluntary liquidation, and after realisation of the assets and the payment of debts there remained the sum of £1469 in the hands of the liquidater. *Held*, that no call was to be made for the purpose of adjusting the rights of members; that the "assets available for distribution" comprised only the said sum of £1,469; and that the assets were to be distributed in proportion to the capital already paid up. *In re* THE FEDERAL PORTLAND CEMENT COMPANY, LIMITED, 24 N.Z. L.R. 813. [*New Zealand.*]

The nominal capital of a company was £33,000 consisting of £1 shares of which 3000 were issued as fully paid up, and 30,000 as contributing. On the contributing shares 13s. 8d. had been paid up. The company went into voluntary liquidation, and after paying debts and expenses there was a surplus of £2,500 in the liquidator's hands. By art. 148 of the articles of association it was provided that if the company should be wound up and the surplus assets should be insufficient to repay the whole of the paid up capital, such surplus assets should be distributed so that as nearly as might be the losses should be borne by the members in proportion to the capital paid up, or which ought to have been paid up on the shares held by them respectively at the commencement of the winding up. *Held*, that the proper way to effect this would be to call up the capital thus making all the shares fully paid up, and then distribute the whole of the assets among the shareholders in proportion to the number of shares held by them. The principle *held* not to be affected by art. 113, providing that subject to the rights of members entitled to shares issued upon special conditions, the profits of the company should belong to the members in proportion to the amount paid up on the shares held by them respectively. *In re* ROCKHAMPTON PROSPECTING CO., 1905 S.R. (Q.) 64; Q.W.N. 15. [*Queenlsand.*]

Company registered in Queensland—Assets and creditors in Victoria—Ancillary jurisdiction to protect local assets. *Re* RUSSELL WILKINS & SONS, 11 A.L.R. (C.N.) 26. [*Victoria.*]

By an arrangement made under the Joint Stock Companies Arrangement Act, 1891, between a company and its depositors, it was provided that certain depositors whose claims had not theretofore been reduced by one-fourth in accordance with prior arrangements made between the company and its depositors, should be first paid to effect such reduction, and that thenceforth all the depositors should be paid *pari passu*. Before all the claims had been reduced by one-fourth as agreed, the company was voluntarily wound up. *Held*, that in the winding-up the depositors who had not been paid 5s. in the £ in respect of their claims were entitled to be paid such amounts before the other depositors received any dividends in respect of their claims. *Re* SYDNEY AND SUBURBAN MUTUAL P.B. & L.I. ASSOCIATION, 5 S.R. 58. [*New South Wales.*]

DISSOLUTION—Sale of land—Vesting order.—When a limited liability company goes into voluntary liquidation, and during liquidation sells portion of its real estate, and receives the full purchase consideration and afterwards becomes automatically dissolved by virtue of sec. 142 of the Companies Act, 1899, before the property has been legally conveyed to the purchaser, the Court will in a proper case make an order under the Trustee Act, 1898, vesting the property in the purchaser for all the estate of the company therein at the date of its dissolution. *In re General Accident Assurance Corporation* ([1904] 1 Ch. 147); *In re Richard Mills & Co. (Brierly Hill, Ltd.)*; *Smith* v. *The Company* (1905 W.N. 36), followed; *In re Taylor's Agreements Trusts* (2 Ch. 737), distinguished and not followed. *Re* CLARKE AND SOLOMONS AGREEMENTS TRUSTS, 5 S.R. 498; 22 W.N. 165. [*New South Wales.*]

—— **Practice.**—The official liquidator should not file any affidavit supplemental to the Master's certificate upon an application to dissolve a company. *In re* THE LADY MACQUARIE GOLD DREDGING CO., 22 W.N. 12. [*New South Wales.*]

FOREIGN COMPANY—Carrying on business.—A company by engaging in one transaction in the State is not thereby deemed to be carrying on business in Western Australia, and need not appoint an attorney under a registered power. LAMSON STORE SERVICE CO. *v.* WEIDENBACH & CO.'S TRUSTEES, 7 W.A.L.R. 166. [*Western Australia.*]

—— **Registration certificate.**—*See* EVIDENCE. BOWDEN BROS. *v.* IMPERIAL MARINE AND TRANSPORT CO., 22 W.N. 195. [*New South Wales.*]

——**Security for costs by.**—*See* COSTS. WILFLEY ORE CONCENTRATOR SYNDICATE *v.* N. GUTHRIDGE, LTD., 27 A.L.T. 70; 11 A.L.R. 333. [*Victoria.*]

OFFICERS—Manager—Sub-manager.—If the managing director of a company is empowered to appoint someone as manager under him, and he appoints someone as manager under him, the fact that in so doing he purports to give the manager greater powers than he is authorised to give him will not make the appointment as manager invalid. FELL *v.* THE PUPONGA COAL AND GOLD MINING COMPANY OF NEW ZEALAND, LTD., 24 N.Z.L.R. 758. [*New Zealand.*]

PROJECTED COMPANY—Subscription— Resulting trust.—*See* TRUST AND TRUSTEE. LUKE *v.* WAITE, 2 C.L.R. 252; 11 A.L.R. 107. [*Victoria.*]

CONSPIRACY.

Liability of trade union for.—*See* TRADE UNION. HEGGIE *v.* BRISBANE SHIPWRIGHTS' PROVIDENT UNION, 1905 S.R. (Q). 155; Q.W.N. 62. [*Queensland.*]

CONSUL.

Security by.—*See* PROBATE AND ADMINISTRATION. *In the estate of* WALLIS, 1905 V.L.R. 671; 27 A.L.T. 38; 11 A.L.R. 315. [*Victoria.*]

CONTEMPT OF COURT.

Publication in newspaper concerning pending trial—Court.—Where, although the publication in a newspaper, after committal and before trial, commenting on the evidence given before a magistrate, in the opinion of the Full Court, amounted to a contempt, the rule *nisi* for a writ of attachment was discharged with costs. *Ex parte* McDougall, 5 S.R. 338; 22 W.N. 73. [*New South Wales.*]

Costs of appeal—Order of High Court—Attachment for non-payment.—*See* Federal Law. Lysaght Bros. & Co. *v.* Falk (No. 2), 2 C.L.R. 443; 11 A.L.R. 445. [*High Court.*]

Practice.—Where an order which limits a time for the doing of an act by the defendant is not served until after the time so limited, the usual supplemental order extending the time for compliance with the original order may be obtained by the plaintiff on an *ex parte* application. Leave to effect substituted service of such supplemental order was given where the Court was satisfied that the defendant had attempted to evade service of the original order. A motion for attachment in the Equity Court shall be moved according to its place in the list and not according to the seniority of counsel on motions generally. Minter *v.* Mimna, 22 W.N. 108. [*New South Wales.*]

And *see* Bankruptcy and Insolvency—Divorce.

CONTINGENT REMAINDER.

See Estate—Will.

CONTRACT.

FORMATION of contract—Cable company.—The Court of Appeal considered that, upon a view of the International Telegraph Convention of St. Petersburg of 1875, of certain agreements to which the New Zealand Government and the appellant company had been parties, but which had been allowed to lapse, and of the practice established under the convention and those agreements and continued after the lapse of the agreements, there was no contract entered into by the appellant company in New Zealand, either with the New Zealand Government or with the sender of a message, for the transmission of the message by its cable from Port Darwin to Madras. The Eastern Extension Australasia and China Telegraph Company, Ltd. *v.* The Commissioner of Taxes, 24 N.Z.L.R. 308; 7 Gaz. L.R. 123. [*New Zealand.*]

—— **Contract not signed or seen by defendant—Adoption—Evidence of assent.**—The defendant, who was about to build a house, instructed her architect to draw up the necessary documents. He accordingly prepared a contract and called for tenders, accepting a particular tender under her instructions and informing her of the fact. The successful tenderer then signed the contract, but the defendant never signed it; and neither saw it nor enquired as to its conditions. The house was built and interim payments made by defendant, who subsequently wrote letters referring to "the contract," and claiming the benefit of certain of its conditions as against the contractor. *Held*, that there was sufficient evidence to go to the jury that the defendant had consented to be bound by the contract although she had not seen or signed it. Brown *v.* Brown, 5 S.R. 146; 22 W.N. 39. [*New South Wales.*]

—— **Offer—Acceptance—Counter offer.**—*See* Principal and Agent. Mooney *v.* Williams, 11 A.L.R. 437; 5 S.R. 304; 22 W.N. 86. [*New South Wales.*]

—— **Unilateral deed whether binding without acceptance.**—*See* Small Debts Recovery. *Ex parte* Noel, 5 S.R. 445; 22 W.N. 131. [*New South Wales.*]

——**By Assets Realisation Board.**—*See* Bank. Pearce *v.* Stevens, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176. [*New Zealand.*]

——**Life assurance—Contract incorporating foreign law—Contractual rights—Procedure.**—Under a policy of life assurance J was entitled at the end of the period mentioned in the policy, to an equitable proportion of surplus, either in cash or by a paid-up policy; at the end of the period J was offered an amount said to be such an equitable proportion as contemplated, but he refused to accept the amount as sufficient, and instituted a suit against the insurance company to ascertain what was an equitable proportion of surplus. The contract of insurance was expressed to be subject to the laws of the State of New York, which laws provide that "no order, judgment, or decree providing for an accounting . . . . or interfering with the prosecution of the business of any domestic insurance corporation . . . . shall be made or granted otherwise than upon the application of the Attorney General on his own motion or after his ap-

proval of a request in writing therefor of the superintendent of insurance . . . ." *Held*, that this condition was not a mere matter of procedure, but formed part of the contract, and was a condition precedent to the institution of the proceedings; State law on this point was retrospective, and affected insurances effected before its date. JOHNSON *v.* MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, 5 S.R. 16; 21 W.N. 108. [*New South Wales.*]

CONSIDERATION.—A commission agent gave an intending purchaser an order to view containing a provision that the order was received on terms that in the event of purchase, the purchaser became liable to the agent for commission. This order was signed by the agent and the intending purchaser. *Held*, that if there was any agreement it was *nudum pactum*. COLLINS *v.* WARD, 26 A.L.T. Supp. 2. [*Victoria.*]

—— **Ambiguity.**—Where there is an ambiguity in a contract, and an agreement is arrived at, whilst the contract is still executory, to act upon a certain construction of it, such an agreement is in the nature of a compromise, and is not void for want of consideration. *Foster* v. *Dawber* (6 Ex. 839; 20 L.J. Ex. 385), distinguished. TOPLISS BROS. *v.* COHR, 24 N.Z.L.R. 540. [*New Zealand.*]

VOID CONTRACT—Money paid under.—*See* LOCAL GOVERNMENT. MCEWAN *v.* CHAIRMAN &C., COUNTY OF SOUTHLAND, 24 N.Z.L.R. 652; 7 Gaz. L.R. 538. [*New Zealand.*]

CONSTRUCTION of contract—Obligation of agent to pass goods through the custom house—Action for not expediting clearance so as to avoid a newly imposed duty.—Where the respondents contracted for certain fixed charges to lighter and load on railway trucks the machinery of the appellants brought by ship, and also to pass it through the Customs without extra charge, *held*, that this obligation did not involve the duty of expediting the clearance of the appellant's goods in less than the 24 hours allowed by the Customs Regulations Act, 1879, so as to avoid the payment of duty which came into force before the expiration of that time. The appellants, who sued to recover the amount of the duty so paid, had not requested that the clearing should be expedited, though the circumstances were not within the contemplation of the contract, and were rightly non-suited. COMMONWEALTH PORTLAND CEMENT CO. *v.* WEBER LOHMANN & CO., 5 S.R. 136. [*New South Wales.*]

—— **Penalty—Liquidated damages.**—It is a presumption, and not an absolute rule of law, that when a fixed sum of money is expressed to be payable on the happening of alternative events, which may occasion damage in different degrees, such sum is a penalty and not liquidated damages. Such presumption may be rebutted by the clear intention of the parties, as gathered from the language of their agreement, and the circumstances. Where a sum, the ultimate realisation of which is within the intention of the parties, is payable by instalments, and the parties have clearly intended that in certain contingencies the whole should become forthwith due, such sum is thereupon payable as liquidated damages and not as a penalty. By an agreement dated August 19, 1902, the appellants, a foreign corporation, leased to Weidenbach & Co., a firm of drapers in Perth, a patent cash railway system known as the ball system, to be installed in the premises of the latter in Hay Street, Perth, for five years, at a rental of £50 per annum. The agreement contained certain terms providing against the discontinuance, removal, sale, assignment or sub-letting of the system by the lessees. Clause 7 of the agreement provided that on the happening of several events not material to this case, and also "in case the lessee shall assign his estate for the benefit of his creditors or otherwise, the whole of the rent for the remainder of the term shall immediately become due"; and it was further provided that the lessees might thereupon, as well as upon the happening of certain other events not material, take possession of the system without prejudice to their rights to recover such rent. Weidenbach & Co., on Dec. 24, 1902, made an assignment of their estate under the Bankruptcy Act Amendment Act, 1898, and eventually went bankrupt, and the appellants thereupon claimed to be entitled to prove for the rent for the whole term of the lease, *viz.*, £250. The trustees of the debtors rejected the appellants' proof of debt in respect of this sum, and on appeal the Judge in Bankruptcy affirmed the decision of the trustees, his Honour holding that the amount so claimed was of the nature of a penalty and not liquidated damages. His Honour, however, allowed £59 2s. 4d., by way of damages, after making certain deductions for rent received by appellants for the system, the remainder of the term of which had reverted to them. The appellants now appealed against this decision. *Held*, that the sum claimed was of the nature of liquidated damages, and not a penalty. Judgment of McMillan J. reversed. LAMSON STORE SERVICE CO. *v.* WEIDENBACH & CO.'S TRUSTEES, 7 W.A.L.R. 166. [*Western Australia.*]

—— **Contract partly written and partly oral.**—The construction of a contract partly oral and partly in writing is a question of fact for the jury, who, in construing it, may consider not only the conversations and the documents, but all the surrounding circumstances. DEANE *v.* CITY BANK OF SYDNEY, 2 C.L.R. 198; 11 A.L.R. 1. [*New South Wales.*]

—— **Carrier—Pregnancy—Dangerous illness.**—*See* CARRIER. DE PLEDGE *v.* AUSTRALASIAN UNITED STEAM NAVIGATION CO., 1904 S.A.L.R. 61. [*South Australia.*]

—— **Inconsistent clauses.**—*See* HUSBAND AND WIFE. MACROW *v.* MACROW, 5 S.R. 432; 22 W.N. 134. [*New South Wales.*]

—— **Uncertainty.**—*See* LANDLORD AND TENANT. PEARCE *v.* STEVENS, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176. [*New Zealand.*]

—— **Remuneration of nightsoil contractor.**—In a contract entered into between a municipal council and a contractor for the removal of nightsoil from the premises of householders within the municipality, the only provision for remuneration was a clause which authorised the contractor "to collect his own fees and charges" which were not to exceed a certain limit. *Held*, that the contractor was not entitled to recover from the council, in an action on the contract, the fees and charges which he had failed to collect from the householders to whom his services were rendered. Decision of the Supreme Court (4 S.R. (N.S.W.) 537; 21 W.N. 193) reversed. BOROUGH OF TAMWORTH *v.* SANDERS, 2 C.L.R. 214. [*New South Wales.*]

—— **Customs of different districts.**—Where a contract is entered into by correspondence between parties resident in different districts, the customs of which differ as to the measurement of the goods the subject-matter of the contract, there is an ambiguity in the contract; and if the parties afterwards act upon a certain construction of the contract they will be bound by that construction. TOPLISS BROS. *v.* COHR, 24 N.Z.L.R. 540. [*New Zealand.*]

—— **Covenant to keep branded.**—Covenant to keep branded cattle and sheep mentioned in the schedule referred to in the covenant. The schedule ran "cattle branded or intended to be branded," with a like clause as to the sheep. *Held*, that the covenant included a covenant to brand. TURKINGTON *v.* TURKINGTON, 5 N.Z. Gaz. L.R. 92, 497. [*New Zealand.*]

—— **"To take 5000 shares"—Evidence.**—The appellant entered into an agreement in writing with the respondents by which he undertook to float a company for the purpose of acquiring and working a certain colliery property. The capital was to consist of 120,000 shares at £1 each, 30,000 to be issued as fully paid to the appellant, 60,000 to be issued as fully paid up at not less than five shillings per share, and the remaining 30,000 to be at the disposal of the company. The respondents agreed *inter alia*, "to take 5,000 shares, and to take the sole agency of the company," and, in consideration of their so doing, the appellant agreed to "transfer" to them "10,000 fully paid up shares out of the 30,000 shares to be issued to him." *Held*, that, on the face of the document, the meaning of the words "to take 5000 shares" was clear and unambiguous. They meant that the respondents would take 5000 of the 60,000 shares to be issued to the public. Therefore, evidence of conversations between the parties, prior to the date of the written contract, to show that the 5000 shares were to be portion of the 30,000 fully paid up shares issued to the appellant, and were to be bought by the respondents from him at five shillings per share, was inadmissible. Decision of the Supreme Court, ordering a new trial ([1904] 4 S.R. (N.S.W.) 547), varied by ordering that a nonsuit be entered. RANKIN *v.* SCOTT, FELL & CO., 2 L.C.R. 164; 11 A.L.R. 25. [*New South Wales.*]

RESCISSION—Reasons.—If a party to a contract has in fact a right to rescind it upon any ground (though that ground may not be put forward by him, and may not be known to him at the time), and he does unequivocally rescind it, the rescission is not rendered ineffectual by the fact that he puts it at the time upon a ground which he cannot establish, or which does not entitle him to rescind. *Cowan* v. *Milbourn* (L.R. 2 Ex. 230) followed. The respondents held land under an agreement for sale and purchase between the Assets Realisation Board and themselves, under which the purchase money was payable by instalments during a period of five years. This agreement provided that they might at any time obtain a conveyance of the property upon executing a mortgage to the Board to secure the balance of the unpaid purchase-money; it also provided that if they should sell any part of the land at a price which the Board should approve, and should pay the full price to the Board, the Board would join in a conveyance of the part so sold, but that, before the Board should be called upon to concur in any such sale, the respondents should take a conveyance of the whole property, and give a mortgage in terms of the provision already referred to. The respondents entered into an agreement with the appellant for a lease to him of part of the land with a compulsory purchasing clause. Before the time for the completion of this agreement by the execution of a lease, the appellant gave the respondents written notice claiming to rescind the agreement and declining to proceed further with it, on the ground of alleged misrepresentation. Shortly after the time for completion, the respondents wrote threatening an action for specific performance unless the appellant completed. The appellant replied by a further written notice of rescission on the ground of misrepresentation. The respondents subsequently having in the meantime obtained a written consent to join in the lease (signed by the general manager for the Assets Realisation Board on behalf of the Board) commenced an action for specific performance against the appellant. The appellant set up, amongst other defences, those of (*a*) misrepresentation; and (*b*) want of title in the respondents. He failed to establish misrepresentation. *Held*, by the Court of Appeal (reversing the decision of Cooper J.), that, as the respondents could not, at the time for completion or at the time of the subsequent notice of

rescission, either make a valid lease themselves or compel the Assets Realisation Board to join in one, the appellant was entitled to rescind, and that the rescission was effectual notwithstanding that he had put it at the time upon the ground of misrepresentation, which he was afterwards unable to establish. Specific performance refused. *Forrer* v. *Nash* (35 Beav. 167, 171); *Brewer* v. *Broadwood* (22 Ch. D. 105, 109); and *Bellamy* v. *Debenham* ([1891] 1 Ch. 412), followed. *Per* Chapman J.:—It could not be said that the appellant, by giving an untenable ground, had lulled the respondents into a sense of security, so that they were prevented from taking steps to overcome the difficulty as to title. PEARCE *v.* STEVENS, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176. [*New Zealand.*]

—— **By parol of written agreement.**—A total rescission and discharge of a written contract on both sides may be effectually made by a verbal agreement to that effect, though the original contract is required by law to be in writing. RUMNEY *v.* CROAKER, 1905 S.R. (Q.) 177; Q.W.N. 61. [*Queensland.*]

—— **Claim for damages.**—*Per* EDWARDS J.—A party who claims to have rescinded a contract under a right to do so, cannot at the same time claim damages for breach of the contract. If a person who has entered into a contract for the purchase of land, and has taken possession thereof, gives notice rescinding the contract, coupled with a claim for damages for breach of the contract, and refuses to give up possession until the damages claimed have been paid, he is not entitled to rely on the notice rescinding the contract. WALKER & WALKER *v.* CREAVEN, 24 N.Z. L.R. 435; 8 N.Z. Gaz. L.R. 113. [*New Zealand.*]

—— **Misrepresentation — Severable contract.**—The defendant agreed to sell and the plaintiff to purchase all the stock-in-trade of the defendant in the business of a storekeeper carried on by her, for the price of £476 17s. 7½d., and the freehold land with the store and premises thereon for the price of £550, making altogether a sum of £1,026 17s. 7½d., of which £326 was paid at the time, and the balance was to be paid as stated in the agreement. *Held*, that the agreement was not severable, and that there could not be a rescission of the sale and purchase of the land and buildings, on the ground of misrepresentation of the turnover of the business, after the plaintiff had been some time in possession, and had used the stock and carried on the business. The plaintiff's only remedy was damages. SMITH *v.* CROOK, 24 N.Z.L.R. 532. [*New Zealand.*]

—— **Continuing misrepresentation.** — *See* FRAUD. ROBERTSON *v.* BELSON, 1905 V.L.R. 555; 27 A.L.T. 48; 11 A.L.R. 299. [*Victoria.*]

NOVATION.—A builder who had contracted to erect a building, he finding materials and labour, accepted a tender for the plumbing. The builder gave the plumber an order on the builder's employers, requesting them to pay the amount of the tender to the plumber on completion of the work to the satisfaction of the architect. This order they accepted and promised to pay. *Held*, that these facts did not constitute a novation of the contract, so as to discharge, as to the plumbing work, the contract between the employers and the builder, and substitute therefor a new contract between the employers and the plumber, but that there was a valid equitable assignment of the debt. ROBINSON *v.* PODOSKY, 1905 S.R. (Q.) 118; Q.W.N. 47. [*Queensland.*]

ACCORD AND SATISFACTION—Equitable interests involved.—*See* HUSBAND AND WIFE. PATERSON *v.* MCNAGHTEN; MCNAGHTEN *v.* PATERSON, 2 C.L.R. 615; 11 A.L.R. 263; 5 S.R. 90; 22 W.N. 25. [*New South Wales.*]

IMPOSSIBILITY of performance.—A company entered into an absolute contract to employ A as agent for three years from the date of the agreement, and in consideration thereof A contracted to advance the company certain moneys and to act as its adviser and agent during that period. For so doing he was to receive in each year a stated commission on the company's gross output. Before the expiration of the term of three years the company, owing to bad seasons and strong competition by another company, was carrying on its business at a loss, and was forced to sell out to the opposing company. In order to carry out the sale, which was advised and carried through by A, it was necessary to go into voluntary liquidation; A, who was a member of the company, concurring in and voting for this course. A sought to prove in the winding-up for damages, made up of the amount of commission which it was estimated would have been earned on the gross output for the period the contract yet had to run at the date of winding-up. *Held*, that the company in ceasting to carry on its business acted under stress of circumstances for which it was not responsible and which for all practical purposes was irresistible, and there was no breach of the agreement by the company. A was therefore *held* disentitled to prove. *Ogdens Limited* v. *Nelson* ([1903] 2 K.B. 287; [1904] 2 K.B. 410), distinguished. *In re* THE NORTH OTAGO DAIRY COMPANY, LTD.; *Ex parte* J. B. MACEWAN & CO., 24 N.Z.L.R. 748. [*New Zealand.*]

STATUTE OF FRAUDS—Sufficient memorandum—Contract by correspondence.—*See* WELCH *v.* CRAWFORD, 8 N.Z. Gaz. L.R. 53. [*New Zealand.*]

—— **Statement in power of attorney.**—A power of attorney showing that a person has been appointed manager is a sufficient memorandum in writing of a previous verbal appointment as manager to satisfy the

Statute of Frauds (assuming the statute to apply). FELL *v.* THE PUPONGA COAL AND GOLD-MINING COMPANY OF NEW ZEALAND, LTD., 24 N.Z.L.R. 758. [*New Zealand.*]

—— **Contract not to be performed within the year—Appointment of manager.**—Sec. 4 of the Statute of Frauds does not apply so as to make writing necessary for the appointment of a manager, where there is no term fixed for the managership, although it may extend, and in fact does extend, beyond a year. FELL *v.* THE PUPONGA COAL AND GOLD-MINING COMPANY OF NEW ZEALAND, LTD., 24 N.Z.L.R. 758. [*New Zealand.*]

—— **Executed contract.**—*Quære*, whether the Statute of Frauds applies at all where the plaintiff is suing for services rendered, and therefore on an executed contract. *Souch* v. *Strawbridge* (15 L.J.C.P. 170). FELL *v.* THE PUPONGA COAL AND GOLD-MINING COMPANY OF NEW ZEALAND, LTD., 24 N.Z. L.R. 758. [*New Zealand.*]

—— **Part performance.**—Acts relied on as part-performance to take a case out of the Statute of Frauds must be unequivocally referable to the alleged agreement. THOMAS *v.* THE CROWN, 2 C.L.R. 127. [*Western Australia.*]

The defendant was the lessee of the Perth City Markets from the Crown for a period of three years, with a right of extension for a further period of one year and fourteen days. The defendant alleged that before the expiration of the three years it was verbally agreed between him and one Cowen (then Director of Agriculture), that in consideration of defendant allowing certain structural alterations in the markets to be made, and paying, in addition to the rent, the sum of six per cent. upon the outlay, he was to have a further lease of seven years. Evidence was given of a conversation between defendant and the Minister, after the death of Cowen, in which the terms of the agreement with Cowen were alleged to have been stated to the Minister. After this conversation the defendant wrote to the Minister asking for favourable consideration of the agreement, but the Minister refused to confirm it. The defendant had remained in possession after the three years had expired until the expiration of the year and fourteen days, and paid interest at 6 per cent. on the value of certain improvements, but it appeared that he had agreed in writing to do so before making the alleged agreement with Cowen. The Crown then brought this action for recovery of possession of the land. The defendant set up the verbal agreement with Cowen, ratification by the Minister, and part-performance. The jury found that the alleged agreement was made in fact, and the Judge held that the acceptance of the rent and interest amounted to ratification of the agreement and also to part performance. The Full Court granted a new trial on the ground of surprise in the admission of the evidence of the conversation with the Minister. *Held*, (1) That the agreement between the defendant and Cowen did not bind the Crown, as Cowen had no authority to make it. (2) That as the payment and receipt of rent and interest were equally referable to existing obligations, they did not establish either ratification or part-performance of the alleged agreement for a new lease for seven years. (3) That the evidence of the conversation with the Minister was immaterial, and, therefore a new trial should not have been granted on the ground of surprise. Decision of Supreme Court of Western Australia (6 W.A. L.R. 91), varied, and judgment ordered to be entered for the plaintiff. THOMAS *v.* THE CROWN, 2 C.L.R. 127. [*Western Australia.*]

—— **Reliance on, in taking accounts before Master.**—*See* PRACTICE. MOORE *v.* LEAN, 22 W.N. 105. [*New South Wales.*]

ASSIGNMENT of right of action.—If a contract the breach of which gives one contracting party the right to recover damages in an action at law against the other be assigned to a third party apart from statutory provision, an action must be brought by the assignee in the name of the assignor, the original party to the contract. Where an agreement allows one party to enter on the other party's land for a certain purpose, and also contains a consent to the license being assigned to any person of good repute, this consent does not itself enable the assignee to sue in his name, or put him in any better position than the assignee of any other contract. ROBSON *v.* MCWILLIAM, 24 N.Z.L.R. 694; 7 Gaz. L.R. 589. [*New Zealand.*]

EVIDENCE of contract made in Victoria.—*See* LICENSING. FOWLER *v.* MORTON, 1905 V.L.R. 76; FOWLER *v.* THOMPSON, 26 A.L.T. 143. [*Victoria.*]

CONTRACTORS' DEBTS ACT.

Effect of notices under ss. 7 and 14.—*See* BANKRUPTCY. *Re* DOSSI, 5 S.R. 204; 22 W.N. 58. [*New South Wales.*]

CONTRACTORS' AND WORKMEN'S LIEN.

See LIEN.

CONVERSION.

Election—Devise of real estate—Direction to convert—Infants—Election to take property as real estate.—Where it is for the benefit of an infant that real estate to which the

infant is entitled should not be converted, the Court may, on behalf of the infant, elect to take the property in its unconverted state, notwithstanding a positive direction by the settlor that the property should be converted. *In re* POPLIN; POPLIN *v.* POPLIN, 5 S.R. 348; 22 W.N. 97. [*New South Wales.*]

Effect on succession duty.—*See* STAMP DUTIES. *In re* WISEMAN, 1905 S.R. (Q.) 53; Q.W.N. 22. [*Queensland.*]

And *see* WILL. *In re* SCARFE, 1904 S.A. L.R. 15. [*South Australia.*]

CONVEYANCING ACTS.

See VENDOR AND PURCHASER.

CORPORATION.

Capability of malice—Defamation.—A corporation cannot be held incapable of malice so as to be relieved of liability for malicious libel when published by its servant acting in the course of his employment, although the servant may have had no actual authority, express or implied, to write the libel complained of, containing statements against the plaintiff which he knew to be untrue; if he did so in the course of an employment which is authorised, the corporation is liable. *Borwick* v. *The English Joint Stock Bank* (1867 L.R. 2 Ex. 259) approved. BROWN *v.* CITIZENS' LIFE ASSURANCE CO., LTD., 4 S.R. 642. [*New South Wales.*]

Statutory corporation—Negligence—Extent of liability.—*See* NEGLIGENCE. MCGOUGH *v.* FREMANTLE HARBOUR TRUST COMMISSIONERS, 7 W.A.L.R. 136. [*Western Australia.*]

Order for discovery against.—*See* DISCOVERY AND INSPECTION. BARRIE *v.* VICTORIAN RAILWAY COMMISSIONERS, 26 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 41. [*Victoria.*]

Foreign corporation.—Appointment of agent. *See* COMPANY.

COSTS.

Crown—Action by.—Costs may be allowed to a successful defendant in a suit brought by His Majesty the King under Part I. of the Crown Remedies and Liability Act, 1890. *R.* v. *Austin* ([1904] 29 V.L.R. 859), not followed. R. *v.* ATKINSON, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412. [*Victoria.*]

Follow event.—Plaintiffs recovered judgment for a small sum which defendant did not admit his liability to pay until during the course of the trial before the jury, but the defendant succeeded in the substantial matter of the litigation both on the claim (which was for a large amount), and on his counterclaim. *Held*, that good cause was shown as regards the claim that costs should not follow the event, and that the Judge in the Court below was at liberty to use his discretion with regard to them. ROBERTSON *v.* BELSON, 1905 V.L.R. 555; 27 A.L.T. 48; 11 A.L.R. 299. [*Victoria.*]

Attorney's.—*See* ATTORNEY AND SOLICITOR.

Reduction of costs—Appeal to Privy Council on assumption that more than £500 is involved.—A party to an action in the Court of Appeal who, by obtaining leave to appeal to the Privy Council, acts upon an order of the Court allowing costs on the assumption that the amount involved exceeded £500, cannot, when it subsequently appears that that assumption was wrong, ask that the order be varied by reducing the costs. R. *v.* JOYCE, 7 N.Z. Gaz. L.R. 661. [*New Zealand.*]

Taxation—Originating summons—Costs out of estate.—Where on the hearing of an originating summons, an order is made that the costs of all parties be taxed as between solicitor and client, and paid out of the estate, such order is not confined to costs incurred by a defendant after the issue of the summons, but includes costs properly incurred by such party prior to the issue of the originating summons, but after notice from the plaintiff of intention to issue the same. *In the will of* SARGOOD; TRUSTEES, &C., CO. *v.* CLARKE, 1905 V.L.R. 84; 26 A.L.T. 129; 11 A.L.R. 62. [*Victoria.*]

—— **Settlement of action—Party and party.**—Costs incurred for the simple purpose of making a settlement of an action are not costs as between party and party. MACKAY *v.* HAMILTON, 1905 V.L.R. 457; 27 A.L.T. 1; 11 A.L.R. 237. [*Victoria.*]

—— **Solicitor and client—Compromise—Counsel's fees.**—An agreement to pay costs as between solicitor and client on a compromise of litigation is not a contract of indemnity, and on taxation as between solicitor and client the party will only be allowed as many of the charges which he would have been compelled to pay his own solicitor for costs of action as fair justice to the other party will permit. In such a taxation the employment of two counsel on a summons for directions, or on settling pleadings, interrogatories, advice on evidence, etc., will not be allowed, neither will the expenses of sending copies of the pleadings, interrogatories, &c., to the client, unless specially desired by him, be allowed. SMITH *v.* SMITH, 27 A.L.T. 109; 11 A.L.R. 452. [*Victoria.*]

—— **Drawing documents.**—Where a document is drawn by counsel a solicitor is not

entitled to charge for drawing same. GREAT CENTRAL FREEHOLD MINES *v.* CHAPMAN, 1905 V.L.R. 294; 27 A.L.T. 3; 11 A.L.R. 188. [*Victoria.*]

—— **Stamp Duties Act—Qualifying witnesses.**—The three scales of costs established by r. 408 apply only to actions at law. "Actions" in r. 420 means actions other than actions at law, and "the scale of fees and allowances" in that rule is the scale in use prior to Sept. 1, 1898. A case stated under s. 18 of the Stamp Duties Act, 1898, is not an action at law, and the costs of qualifying witnesses cannot be allowed on taxation. ROBERTSON *v.* COMMISSIONER OF STAMP DUTIES, 22 W.N. 200. [*New South Wales.*]

—— **Appeal.**—Case from Napier removed to Court of Appeal, Wellington—Judgment affecting sum over £500.—Costs allowed as on a case from a distance. COMMISSIONER OF STAMPS *v.* WILLIAMS, 7 N.Z. Gaz. L.R. 430. [*New Zealand.*]

—— **Review.**—A taxation of costs cannot be reviewed nor can a summons be taken out for that purpose, until the taxing officer has made his allocatur, as he has not, until doing so, finally decided what costs he will allow. *Sellman* v. *Boorn* (8 M. & W. 552), followed. KEOGH *v.* KEOGH, 26 A.L.T. 202; 11 A.L.R. (C.N.) 38. [*Victoria.*]

Untaxed costs—Debt—Examination of debtor.—Costs, though untaxed, are a debt, and therefore an order may be made under Order XLII., r. 32, for the examination of a party ordered to pay costs, although such costs have not been taxed. WILKIE *v.* MCCALLA, 1905 V.L.R. 104; 26 A.L.T. 194; 11 A.L.R. 100. [*Victoria.*]

Certificate—Detinue—Judgment over £30.—The plaintiff in an action of detinue obtained a verdict and signed judgment for £31 19s., which included £27 for the value of the goods. After verdict the defendant returned the goods. The plaintiff without obtaining a certificate taxed his costs, which were added to the judgment. The defendant's attorney attended on taxation and took no objection thereto. The defendant subsequently applied to set aside the judgment. *Held*, that the defendant could not be heard to say he was ignorant of the form of the judgment when he attended the taxation and that he had waived his right to object to the irregularity, if any, in the proceedings. *Held, also*, that the taxation without a certificate was not a nullity. *Miller* v. *Hall* (8 L.R. 469), considered. EGAN *v.* PIGOTT, 21 W.N. 251. [*New South Wales.*]

—— **Specially endorsed writ—Petty Debts Court.**—There is no settled practice that a certificate of costs will not be granted where the writ is specially endorsed if the amount claimed could have been recovered in the Petty Debts Court. ROSMAN *v.* KENNA, 21 W.N. 258. [*New South Wales.*]

Security.—An unwilling defendant ought not to be compelled to accept as security for costs the bond of persons who are resident out of the jurisdiction of the Court, and who have no assets within the jurisdiction. *Aldrich* v. *Griffen Iron Co.* ([1904] 2 K.B. 850), distinguished. WATSON *v.* HUDDART PARKER & CO., 7 N.Z. Gaz. L.R. 467. [*New Zealand.*]

The fact that a foreign company, plaintiff in an action, carried on business in this State is no answer to an application on behalf of the defendant in the action for security for costs unless it be shown that the plaintiff has property within the jurisdiction liable to and available for execution of sufficient value to satisfy the probable costs to which the defendant may properly be entitled. The fact that the defendant might satisfy his judgment by equitable execution or other process from patent rights possessed by the plaintiff or from royalties therefrom is not sufficient answer to the application for security. WILFLEY ORE CONCENTRATOR SYNDICATE *v.* N. GUTHRIDGE, 27 A.L.T. 70; 11 A.L.R. 333. [*Victoria.*]

Set-off. — *See* EXECUTION. O'NEIL *v.* HART (2), 1905 V.L.R. 259. [*Victoria.*]

"Two Guineas" rule—Tender of costs to respondent.—Where a respondent appears on the hearing of a petition, motion, or summons, merely to ask for his costs on the ground that no tender of two guineas was made to him under Rule 350, a sum not exceeding two guineas will be allowed for his costs in addition to the two guineas which should have been tendered to him in the first instance. PERMANENT TRUSTEE COMPANY *v.* MARTIN, 22 W.N. 47. [*New South Wales.*]

Appeal—Infant defendants.—Infant defendants are entitled to their costs of appearance on the hearing of an appeal, even though they have not given notice of appeal. HOLDEN *v.* BLACK, 2 C.L.R. 768; 1905 V.L.R. 326; 26 A.L.T. 205; 11 A.L.R. 200, 393. [*Victoria.*]

On discontinuance of action for infringement of patent. *See* PRACTICE. FORTESCUE *v.* NORTHEY, 1905 V.L.R. 724; 27 A.L.T. 90; 11 A.L.R. 448. [*Victoria.*]

Special case from Mining Warden.—A Warden was directed to state a special case, and on the hearing of such case the Supreme Court ordered that the costs of the defendant of and incidental to the special case, including costs of the prior proceedings in relation to and occasioned by the order *nisi*, be taxed and paid by the complainant. *Held*, that such order covered the costs of the defendant in connection with the preparation and settling of the special case. MCGREGOR *v.* KEAN, 27 A.L.T. 20; 11 A.L.R. 337. [*Victoria.*]

In District and County Courts.—*See* DISTRICT AND COUNTY COURTS.

Of High Court appeal.—*See* FEDERAL LAW.

In Interpleader.—*See* INTERPLEADER.

Mortgage proceedings.—*See* MORTGAGE. PERMANENT TRUSTEE CO. *v.* MARTIN, 22 W.N. 76. [*New South Wales.*]

In patent matters.—*See* PATENTS.

In Privy Council appeals.—*See* PRIVY COUNCIL APPEALS.

In Probate.—*See* PROBATE AND ADMINISTRATION.

Under Public Works Act.—*See* PUBLIC WORKS.

Resumption of land.—*See* PUBLIC WORKS.

Of removal of trustee of settlements.—*See* TRUST AND TRUSTEE. PERKINS *v.* WILLIAMS, 22 W.N. 107. [*New South Wales.*]

Proceedings by tenant for life in respect of trust estate.—*See* ESTATE. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 306; 27 A.L.T. 12; 11 A.L.R. 258. [*Victoria.*]

Execution for.—*See* EXECUTION. O'NEIL *v.* HART, 1905 V.L.R. 259. [*Victoria.*]

Charging order for costs.—*See* EXECUTION. WILKIE *v.* MCCALLA, 1905 V.L.R. 80; 26 A.L.T. 122; 11 A.L.R. 48. [*Victoria.*]

Attachment for non-payment.—*See* CONTEMPT OF COURT.

COUNTIES ACT.

See LOCAL GOVERNMENT.

COURTS OF JUSTICE TECHNICAL DEFECTS REMOVAL.

See DESERTED WIVES AND CHILDREN. SMITH *v.* SMITH, 7 N.Z. Gaz. L.R. 540. JUSTICES. GOODWIN *v.* ROSS, 7 N.Z. Gaz. L.R. 545. [*New Zealand.*]

CRICKET GROUND.

See PUBLIC RESERVE.

CRIMINAL LAW.

MENS REA.—The law as to *mens rea* discussed. R. *v.* EWART, 8 N.Z. Gaz. L.R. 22. [*New Zealand.*]

HUSBAND AND WIFE—Coercion—Evidence.—What is sufficient evidence to rebut the presumption of coercion with regard to the criminal act of the wife done in the husband's presence, and jointly with him. R. *v.* JACKSON, 4 S.R. 732; 21 W.N. 241. [*New South Wales.*]

ACCESSORY after the fact.—A person who merely destroys evidence against the principal offender is not an accessory after the fact. R. *v.* SWEENEY, 7 N.Z. Gaz. L.R. 529 [*New Zealand.*]

OFFENCES—Shooting with intent to prevent lawful apprehension.—In order to support a conviction for shooting with intent to prevent a lawful apprehension by constables without warrant, where no offence has been committed or suspected to have been committed, but which is sought to be justified on the ground that the intended apprehenders were constables suspecting an evil design only, it must be shown that the person sought to be apprehended knew that they were constables, and that they were intending to apprehend him. R. *v.* MCCABE, 1904 S.A.L.R. 115. [*South Australia.*]

—— **False pretence—What is.**—The prisoner was indicted for obtaining three blouses by false pretences. The evidence was as follows: A shop assistant gave evidence that the accused had come into the shop and asked for some blouses on approval for Miss Lee, at the Empire Hotel, saying that Miss Lee would tell the proprietor of the shop—who was staying at the hotel—which of the blouses suited her. The accused took three blouses away, but did not tell the assistant that she was Miss Lee, and she did not return the blouses. The assistant did not ask her if she were Miss Lee, and did not know that that was her name, but the accused did not say that Miss Lee was another person. *Held*, that there was no evidence of false pretence to go to the jury. R. *v.* LEE, 7 N.Z. Gaz. L.R. 527. [*New Zealand.*]

—— **False promise.**—The prisoner promised to get back an article belonging to the

prosecutor (which had been pledged by the prisoner with the prosecutor's consent), if the prosecutor would give him £2. The pledgee however, had already disposed of the article, and the prisoner was, therefore, unable to get it back. On an indictment for obtaining the £2 by false pretences, in the absence of evidence that at the time of obtaining the money the prisoner knew that the article could not be got back, *held*, that the offence was not made out. *R. v. Giles* (34 L.J.M.C. 50), observed upon. R. *v.* KIRKBY, 7 N.Z. Gaz. L.R. 448. [*New Zealand.*]

—— **Onus of proof—Offence punishable summarily.**—The accused was convicted on four counts with obtaining various small sums of money from different persons for alleged medical treatment by falsely pretending to be a doctor, and on a fifth count charging the accused with falsely pretending to be a doctor within the meaning of the Medical Practitioners Registration Act, 1869, which provides that such offences shall be punishable summarily. After the conviction, but before sentence, accused's counsel moved for arrest of judgment—first, as to the first four counts of the indictment, on the ground that the learned Judge had misdirected the jury in not directing them that if the accused was a qualified medical practitioner in any country there was no false pretence in his claiming to be a doctor in this colony, notwithstanding the fact that he was not registered as such under the provisions of the Medical Practitioners Registration Act, 1869; and, second, as to the fifth count, that the Court had no jurisdiction to try the offence, which should have been dealt with summarily. *Held*, while leaving undecided the question whether a duly qualified medical practitioner of a civilised country practising in the colony, but not duly registered here, could or could not be prosecuted for obtaining money by false pretences, there was abundant evidence that the accused was not a qualified medical practitioner of any civilised state, and that the onus of proof lay on him to show that he possessed such qualifications. The conviction on the first four counts was therefore sustained. *Held*, as to the fifth count, that the charge should have been dealt with summarily, and that this count must be quashed. R. *v.* KINGSTON, 24 N.Z.L.R. 431; 7 Gaz. L.R. 395. [*New Zealand.*]

—— **Particulars.**—In an indictment for obtaining money by false pretences, the prisoner is entitled to be informed what the false pretences were; and where the information is insufficient, particulars will be ordered. R. *v.* KINGSTON, 24 N.Z.L.R. 201; 7 Gaz. L.R. 393. [*New Zealand.*]

Particulars which stated that "the particulars of the false pretences . . . . are those facts disclosed in the depositions taken in the lower Court, particularly as to Count 1, in the depositions of H.P., supported by the evidence of other witnesses," *held*, to be no particulars at all, and particulars ordered setting out, in detail, in what the false pretences consisted. If depositions show some specific fact as having been stated by the prisoner, and the falsity of such statement, it may be that particulars are not required. R. *v.* KINGSTON, 24 N.Z.L.R. 201; 7 Gaz. L.R. 393. [*New Zealand.*]

—— **Larceny by trick.**—*See* R. *v.* JENKINS, 11 A.L.R. (C.N.) 49. [*Victoria.*]

——**Larceny as bailee—Agent—1900 No. 40 (N.S.W.), s. 125.**—An agent having general authority under power of attorney to act for his principal, and, amongst other things, to collect rents from time to time, as they became due, with instructions to make certain payments on behalf of his principal, out of the moneys received, and account for the balance every three months, continued for a period of several years to receive the rents and to make payments from time to time on his principal's behalf, but neglected altogether to comply with the instructions as to accounting, and fraudulently appropriated to his own use the balances which should have been paid over to his principal. *Held*, that he was not liable under sec. 125 of the Crimes Act, 1900, to be convicted of larceny as a bailee of the sum of money representing the balance due from him to his principal. *R.* v. *Brodie* (15 N.S.W. L.R. 436); *R.* v. *Amora* (18 N.S.W.L.R. 114); and *R. v. Pritchard* ([1901] 1 S.R. (N.S.W.) 364), distinguished. Decision of the Supreme Court, *R.* v. *Slattery* ([1905] 5 S.R. (N.S.W.) 294; 22 N.S.W.W.N. 92), reversed. R. *v.* SLATTERY; SLATTERY *v.* R., 2 C.L.R. 546; 5 S.R. 294; 22 W.N. 92. [*New South Wales.*]

—— **Cattle stealing—Receiving—Illegally using.**—Sec. 130 of the Crimes Act, 1900, provides that on the trial of a person for stealing cattle, the jury, if they are not satisfied that the accused is guilty of that charge, but are satisfied that he is guilty of an offence under sec. 131 of the Act, that is, of taking and working or otherwise using cattle the property of another person without the consent of the owner, may acquit the accused of the offence charged and find him guilty of the other offence, and he shall be liable to punishment accordingly. The applicants were charged with stealing cattle, and also with feloniously receiving cattle knowing them to have been stolen. The Judge explained to the jury the verdict which they were entitled to return under secs. 130, 131, describing the offence in the latter section as "illegally using." The jury acquitted the prisoners of the offence charged and found them guilty of "illegally using." The Supreme Court having, on a special case stated, sustained the conviction on the ground that the verdict returned was a substantially accurate description of the offence created by sec. 131, the High Court, being of the opinion that that decision was obviously right, refused to grant specail leave to appeal. Special leave to appeal from the decision of the Supreme Court:

R. v. Lilliecrap and another (22 N.S.W. W.N. 125), refused. R. *v.* LILLIECRAP; LILLIECRAP *v.* R., 2 C.L.R. 681; 5 S.R. 425; 22 W.N. 125. [*New South Wales.*]

——**Evidence of using—Cattle used as coachers.**—The prisoners were convicted of illegally taking and using cattle. The only evidence of using was that they were seen driving the cattle in question with a beast of their own, which went quietly, but that on the previous day they were unable to drive their own beast without using other cattle as coachers. *Held*, sufficient evidence to support the verdict. R. *v.* LILLIECRAP; LILLIECRAP *v.* R., 2 C.L.R. 681; 5 S.R. 425; 22 W.N. 125. [*New South Wales.*]

——**Administering extra judicial oath.**—The administration of an extra judicial oath is an indictable offence under s. 20 of the Oaths Act (1900 No. 20). It is not necessary to allege or prove *mens rea* in the defendant. R. *v.* MARTIN, 4 S.R. 720; 21 W.N. 233. [*New South Wales.*]

—— **Abortion—Administering drugs.**—It is an offence under sec. 76, but not under sec. 203 (1) of the Criminal Code Act, 1893, to supply to a woman an innoxious drug, intending that it should be used by her to procure her miscarriage, knowing that she intended to use it for that purpose, and believing that it was capable of procuring a miscarriage. R. *v.* AUSTIN, 7 N.Z. Gaz. L.R. 499. [*New Zealand.*]

PRACTICE—Indictment—Variance—Amendment—Substantial wrong.—A Judge has power under sec. 365 to amend a material variance if satisfied that the accused will not thereby be prejudiced in his defence, or suffer any substantial wrong. The prisoners, man and wife, were charged with obtaining money under false pretences, the false pretence alleged being that certain goods over which they gave a bill of sale were the sole property of the wife. During the summing up the Judge discovered that the declaration in the bill of sale was that the goods were their joint property. *Held*, that the whole case having been conducted on both sides on the assumption that the pretence charged was that made in the declaration, the Judge had power to amend the variance under s. 365, and that in any case no substantial wrong had been done within the meaning of s. 470. R. *v.* JACKSON, 4 S.R. 732; 21 W.N. 241. [*New South Wales.*]

A prisoner was convicted of being an accessory after the fact. There being no evidence to support the conviction, *held*, that the indictment could not be amended by substituting the totally different offence created by sec. 121 (4) of the Criminal Code, of wilfully attempting to obstruct, &c., the course of justice. R. *v.* SWEENEY, 7 N.Z. Gaz. L.R. 529. [*New Zealand.*]

—— **False pretences.**—*See False Pretences, supra, col.* 54.

—— **Quashing.**—Offences punishable on summary conviction. *See* R. *v.* KINGSTON, 24 N.Z.L.R. 431; 7 Gaz. L.R. 395, *col.* 55. [*New Zealand.*]

—— **Trial—Joint offence—Separate trial.**—An application by one of two persons jointly indicted for theft for a separate trial refused where the charge amounted to one of a joint conspiracy to steal. *R.* v. *Bradlaugh* (15 COX C.C. 217), distinguished, (24 N.Z.L.R. 799). R. *v.* GIBSON AND HOLROYD, 24 N.Z.L.R. 799; 7 Gaz. L.R. 528. [*New Zealand.*]

—— **Jury — Challenge.** — Where persons jointly charged are represented separately, challenges made by their respective representatives are separate challenges, though it be not stated on whose behalf the challenges are made. R. *v.* MURPHY, 1905 Q.W.N. 52. [*Queensland.*]

—— **Plea.**—If a prisoner persists in pleading guilty, it is not the Judge's duty to enter a plea of not guilty merely because the prisoner adds a statement, which, if proved, might amount to a defence. R. *v.* MARTIN, 4 S.R. 720; 21 W.N. 233. [*New South Wales.*]

—— **Autrefois convict.**—The applicants were convicted, under sec. 19, sub-sec. (2) of the Games, Wagers and Betting Houses Act, 1902, of having been found in a common gaming house without lawful excuse. They were then charged at the same Court under sub-sec. (1) of the same section, with having assisted the keeper of the house in the betting business that was there carried on. They pleaded *autrefois convict*, but the magistrate, after hearing the evidence, which was practically a repetition of that given in the previous case, again convicted and fined them. The Supreme Court having decided, on a motion by the applicants for a prohibition, that the magistrate was right, and that the plea of *autrefois convict* was not made out, the High Court, seeing no reason to doubt the correctness of that decision, refused to grant special leave to appeal. The test to be applied where the plea of *autrefois convict* is raised is to consider whether the evidence that was necessary to support the second charge would have been sufficient to procure a legal conviction on the first charge. *R.* v. *Bingham* (2 N.S.W.L.R. (L), 90), approved. Special leave to appeal to the High Court from the decision of the Supreme Court (22 N.S.W.W.N. 40), refused. *Ex parte* SPENCER; SHERWOOD *v.* SPENCER, 2 C.L.R. 250; 5 S.R. 150; 22 W.N. 40. [*New South Wales.*]

—— **Witnesses named on the indictment—Calling—Right of reply.**—Counsel for the prisoner has not the right to have witnesses whose names are on the back of the indictment called by the Court. The matter is in

the Court's discretion; if it is done, the Crown does not thereby obtain the right of reply. If counsel for the prisoner calls them, they thereby become his witnesses, and the Crown has the right of reply. R. *v.* SINCLAIR, 7 N.Z. Gaz. L.R. 449. [*New Zealand.*]

—— **Defect in evidence—Duty of prosecutor.**—*Semble*, that where a Crown Prosecutor becomes aware of a serious defect in the evidence tendered by him, he ought to draw the attention of the Court thereto. R. *v.* YOS YUJNOVICH, 7 N.Z. Gaz. L.R. 74. [*New Zealand.*]

—— **Summing up—Direction to jury.**—A Judge who has summed up generally in the case and directed the jury on the evidence as a whole, is not bound at the request of counsel to direct them that if they believe certain specific evidence they must acquit the prisoner. R. *v.* JACKSON, 4 S.R. 732; 21 W.N. 241. [*New South Wales.*]

——**Evidence—Depositions—Material omission.**—On the trial of a prisoner for murder of Mrs. Hanlon, her deposition, taken by the committing magistrate, was put in evidence under sec. 409. It appeared that while Mrs. Hanlon was giving her evidence she said "I cannot recollect," but that did not appear on the depositions. *Held*, that as a material part of the evidence had not been taken down the deposition was inadmissible. R. *v.* JACKSON, 22 W.N. 206 [*New South Wales.*]

—— **Objection—Grounds.**—At the trial of the prisoner certain evidence was objected to upon certain specific grounds, and a special case was stated setting out the points so taken. *Held*, that it was open to the prisoner on the special case to raise other objections which had not been taken as to the admissibility of the evidence. R. *v.* JACKSON, 22 W.N. 206. [*New South Wales.*]

—— **Evidence of other larceny.**—On a presentment for larceny of a sheep with a second count for receiving, *held*, that evidence that five stolen lambs and one other stolen sheep were in the possession of the accused at the same time, and were dealt with by him in the same way as the sheep the subject of the prosecution, was not admissible on either count. *R. v. Oddy* (2 Den. C.C.R. 264), followed. R. *v.* EMMETT, 1905 V.L.R. 718; 27 A.L.T. 112; 11 A.L.R. 484. [*Victoria.*]

—— **Confession—Threat or promise.**—On an indictment for embezzlement by the servant of a company of its property, it appeared that there were entries in his book requiring explanation, and that certain moneys received by him had not been entered in the books, nor the cash handed to the cashier. Being pressed for an explanation of these matters at a meeting of the directors, and having given an explanation which was thought unsatisfactory, the solicitor to the company said, "No reasonable man could accept such an explanation. You had better own up, as it will be easier for you." One of the directors said:—"Come, now, Sinclair. own up like a man." The accused then made a confession. *Held*, that under the Evidence Further Amendment Act, 1895, sec. 17, the confession was admissible. R. *v.* SINCLAIR, 7 N.Z. Gaz. L.R. 441. [*New Zealand.*]

—— **Statement made in presence of accused—Depositions.**—The principle that statements made in the presence of the accused may be evidence against him is not necessarily excluded by the fact that the statement was made in the form of a deposition before a magistrate. Where such a statement is tendered it is the duty of the Judge first of all to determine whether any inference can be drawn from the prisoner's conduct that he acquiesces in the accuracy of the statement. If so, then it is for the jury to determine what weight should be attached to the inference. R. *v.* WARTON, 1905 S.R. (Q.) 167; Q.W.N. 63. [*Queensland.*]

Statements made in the presence of the prisoner and denied by him as false, are not admissible in evidence against him as an admission of guilt. Where, to prove an admission of guilt, evidence is tendered of statements made in the prisoner's presence and of his conduct or remarks in relation thereto, it is the duty of the Judge, before admitting the evidence, to decide on *voir dire* whether the evidence is such as would justify the jury in inferring an admission, and counsel for the defence has the right to interpose to show that no admission was made. Where the Judge refused to allow counsel to interpose to show that the prisoner denied the truth of the statements made in his presence, and admitted the evidence without enquiry as to its admissibility, *held*, that the conviction must be quashed and that substantial injustice had been done to the prisoner. R. *v.* STEVENS, 4 S.R. 727; 21 W.N. 245. [*New South Wales.*]

——**Cross-examination of prisoner—Admission—Proof of evidence given before magistrate—Depositions.**—A prisoner giving evidence cannot be asked in cross-examination, even though the object of the cross-examination be only to test his credibility, to admit that he heard the evidence given by a certain witness before the magistrate on the committal proceedings, and that the said evidence was substantially the same as that given by the same witness at the trial, without the deposition of such witness being produced and put in. R. *v.* HOLLIS, 5 S.R. 283; 22 W.N. 83. [*New South Wales.*]

—— **Telegram.**—Under sec. 25 of the Electric Lines Act, 1884, an original telegram is not made evidence, the section only applies to transcripts of telegrams after transmission. R. *v.* LAWRENCE, 7 N.Z. Gaz. L.R. 559. [*New Zealand.*]

A telegram not proved to have been signed

or delivered by or on behalf of a prisoner, *held*, not to be admissible against him. R. *v.* LAWRENCE, 7 N.Z. Gaz. L.R. 559. [*New Zealand.*]

—— **Withdrawing exhibit from jury.**—A Judge cannot withdraw an exhibit from the jury. R. *v.* MIDWINTER, 22 W.N. 202. [*New South Wales.*]

—— **New trial—Evidence wrongly admitted.**—Where evidence wrongly admitted had possibly influenced the verdict of the jury, a new trial was ordered. *Makin* v. *Attorney-General of New South Wales* (1894 A.C. 57), followed. R. *v.* LAWRENCE, 7 N.Z. Gaz. L.R. 559. [*New Zealand.*]

—— **Verdict against evidence—Circumstances beyond Court's control.**—On an indictment for rape a witness swore that the prosecutrix had complained to him that the full offence had been committed. After the jury had retired he stated that the complaint was of an offence, but not the full offence. The jury was recalled, and he corrected his evidence accordingly. The prosecutrix was not recalled to give her version of the complaint. The prisoner having been convicted, *held*, that the Court would not grant a new trial on the ground that the verdict was against evidence. *R.* v. *Styche* (20 N.Z.L.R. (C.A.) 744; 3 Gaz. L.R. (C.A.) 249), followed. *Held, further*, that the prisoner might apply to the Governor for a new trial. R. *v.* YOS YUJNOVICH, 7 N.Z. Gaz. L.R. 74. [*New Zealand.*]

Where immaterial evidence was admitted but the Judge directed the jury to disregard the evidence, *held*, that the conviction could not be set aside. *R.* v. *Gibson* (18 Q.B.D. 537), distinguished. R. *v.* MIDWINTER, 22 W.N. 202. [*New South Wales.*]

—— **Point reserved.**—The prisoner having pleaded guilty, *held*, that the Court could not consider a point reserved as to whether it was necessary for the Crown to prove *mens rea*. R. *v.* MARTIN, 4 S.R. 720; 21 W.N. 233. [*New South Wales.*]

—— **Case stated—Practice.**—It is a condition precedent to the exercise by the Court before which a person is tried of the power conferred by sec. 667 of the Criminal Code to state a case for the opinion of the Full Court on points of law arising at the trial, that the person tried shall have been convicted by the jury. If the jury acquit the accused or fail to agree in a verdict, the Judge at the trial, whether at request of counsel for accused or in the exercise of his own discretion, has no power under sec. 667 to state a case. No case for the Full Court can be reserved under the Criminal Code at at instance of the prosecutor except as provided by sec. 671. In the case here reported, the jury not having convicted the accused, the Court declined to deal with the points of law raised in the case which had been stated. R. *v.* DAVIS, 7 W.A.L.R. 78. [*Western Australia.*]

—— **Objection to evidence—Grounds not stated below.**—*See* R. *v.* JACKSON, 22 W.N. 206. [*New South Wales.*] *Col.* 59.

ARREST without warrant.—*See* FALSE IMPRISONMENT. O'BRIEN *v.* COMMISSIONER OF RAILWAYS, 7 W.A.L.R. 119. [*Western Australia.*]

Shooting constable to prevent.—*See* R. *v.* MCCABE, 1904 S.A.L.R. 115, *col.* 54. [*South Australia.*]

A constable of police has no power to arrest in Victoria without a warrant on reasonable suspicion that the person arrested has committed a felony in another British possession. BROWN *v.* LIZARS, 1905 V.L.R. 165, 540; 26 A.L.T. 159; 11 A.L.R. 42, 345. [*Victoria.*]

SEQUESTRATION of property.—By an order made under sec. 469 of the Crimes Act the estate of an offender was sequestrated, and it was subsequently ordered that all claims against his estate be determined and all questions arising under the bankruptcy be dealt with and decided as if the offender had been made bankrupt under the provisions of the Bankruptcy Act of 1898. A creditor sought to prove in the estate for moneys alleged to have been stolen by the offender, and his claim was admitted by the Registrar in Bankruptcy at the sum of £759 2s. On appeal to the Judge in Bankruptcy it was contended for the first time on behalf of the offender that under the order claims for unliquidated damages arising from a tort could not be proved, as they were not provable under the Bankruptcy Act, that the claim of the creditor was for damages in respect of a wrong, and must, therefore, be disallowed. *Held*, that the order was *ultra vires* so far as it restricted the right of the claimant to prove for damages in respect of any wrong, that the order should be discharged and a fresh order made in terms of s. 49 of the Crimes Act, and the amount ascertained by the Registrar as due to the claimant adopted. *Re* YOUNG, 5 S.R. 38; 21 W.N. 208. [*New South Wales.*]

QUARTER SESSIONS—Absence of preliminary investigation—Power of Crown Prosecutor.—A Crown Prosecutor has power to file an indictment at Quarter Sessions in the absence of a committal or preliminary investigation. R. *v.* BAXTER, 5 S.R. 134; 22 W.N. 24. [*New South Wales.*]

HABITUAL CRIMINALS ACT—Larceny—Cattle stealing.—The offence of cattle stealing is not included under the heading of larceny in the Schedule to the Habitual Criminals Act. R. *v.* MORTON, 22 W.N. 203. [*New South Wales.*]

CROWN.

Governor—Appointment of deputy—Signature by deputation.—The Governor of the colony appointed the Lieutenant-Governor,

Sir. F. M. Darley, his deputy, under sec. 13 of the letters patent of 29th Oct., 1900. Sir F. M. Darley issued a commission under the Great Seal in the name of the Governor which was signed "F. M. Darley, Lieutenant-Governor." Sir. F. M. Darley had power to sign the document by virtue of his deputation, but not as Lieutenant-Governor. *Held*, that the words "Lieutenant-Governor" were mere words of description, that it was unnecessary that the words "by deputation" should be inserted after the signature, and that the commission was valid. CLOUGH *v.* BATH, 22 W.N. 152. [*New South Wales.*]

Liability of Crown servant to conviction under an Act not binding on Crown.—*See* PRINCIPAL AND AGENT. LANGWILL *v.* LEAHY, 4 S.R. 717; 21 W.N. 232. [*New South Wales.*]

Garnishee—Commissioner for Railways.—Moneys due from Commissioner for Railways not attachable under Garnishee order. *See* GARNISHEE. DREW *v.* MIDDLETON, 1905 Q.W.N. 3. [*Queensland.*]

Crown debt—Priority—Insurance policy.—*See* INSURANCE. *Estate of* MATTSON, 22 W.N. 159. [*New South Wales.*]

State Coal Mine Act.—*See* STATE COAL MINE.

Power to extradite.—*See* EXTRADITION.

Land Transfer Act—Claim by Crown against assurance fund.—*See* LAND TRANSFER. R. *v.* REGISTRAR-GENERAL OF LAND, 7 N.Z. Gaz. L.R. 511. [*New Zealand.*]

Costs of action by.—*See* COSTS. R. *v.* ATKINSON, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412. [*Victoria.*]

CROWN GRANT.

Reservation — Construction — Seashore — High-water mark—"Creek, harbour, or inlet."—By Crown grant, dated the 29th February, 1840, fifty acres of land were granted bounded on the east by the sea beach and on the north by the south margin of a small lagoon or lake, reserving all land "within one hundred feet of high water mark on the Sea Coast and on every Creek, Harbour and Inlet." On the evidence the Court found (1) that the state of the lagoon was continually varying according to the conditions of wind and weather; (2) that the lagoon was more or less permanently separated from the sea by a sandbar which rose some feet above the ordinary level of the lagoon and above high water whether at spring or neap tide; (3) that after a heavy rainfall the creek or stream running into the lagoon from the west filled up the lagoon until the water was nearly on a level with the top of the sandbar; (4) that when this was the case a channel was often made artificially across the bar and the water allowed to run into the sea; (5) that occasionally the water of the lagoon made a channel by its own pressure across the bar; (6) that the water running through the channel widened and deepened it; (7) that when the water in the lagoon had run out the channel was soon closed by the action of the sea and wind banking up the sandbar; (8) that in recent years when a channel in the bar was open, the sea water flowed into the lagoon on some occasions at high water, the depth of the sea water so flowing in, in the channel, varying from one foot to two or three inches; (9) that previously to 1880 there was rarely or never any inflow from the sea except by waves sometimes lapping over the bar; (10) that at high spring tides, with a south-easterly gale blowing the waves of the sea ran up the outer slope of the sand-bar and the end of the waves ran over into the lagoon; (11) that the water in the lagoon was salt, at any rate at the eastern end, from the access of sea water; (12) that in 1840 the lagoon was less exposed to the entrance of the sea than in recent years; and (13) that the lagoon was not subject to the ordinary ebb and flow of the tides. *Held*, on these findings of fact, that the lagoon was not an inlet of the sea within the meaning of the Crown grant, and that there was no reservation in favour of the Crown of the land within one hundred feet of the southern shore of the lagoon. ATTORNEY-GENERAL *v.* MEREWETHER, 5 S.R. 157; 22 W.N. 50. [*New South Wales.*]

For public reserve.—*See* PUBLIC RESERVE.

CROWN LANDS.

SUPREME COURT CASES.

Crown Lands Act Amendment Act (1903 No. 15), sec. 3 (f)—Applicant for A.C.P.—Holder of O.C.P.—Transferee—Six months' residence.—The transferee of an original conditional purchase cannot apply for an additional conditional purchase under sec. 3 of 1903 No. 15, unless he has resided for six months on his holding, whether he acquired by transfer before or after the passing of that Act. *In re* TE KLOOT, 5 S.R. 422; 22 W.N. 137. [*New South Wales.*]

1884 (48 Vic. No. 18), sec. 21 (4)—Crown Lands Act Amendment Act (1903 No. 15), secs. 3, 4—Homestead selection area within suburban area—Availability for additional conditional purchase.—Lands set apart for homestead selection within a suburban area are not available under sec. 3 (*a*) of 1903 No. 15 for additional conditional purchase, unless a notification has been issued under sec. 4 of that Act, to take such lands out of the exemption

contained in sec. 21 (4) of the Act of 1884. MINISTER FOR LANDS *v.* HACK, 5 S.R. 124; 22 W.N. 21. [*New South Wales.*]

1889 (53 Vic. No. 21), secs. 14, 20—Regulations 3rd June, 1895, r. 79—Application for A.C.P. by virtue of mortgaged O.C.P.—Declaration and consent of mortgagee.—Where an additional conditional purchase is applied for by virtue of an original conditional purchase which has been transferred by way of mortgage, the written consent of the mortgagee and the statutory declaration as to the existence and nature of the mortgage, required respectively by sec. 20 of the Crown Lands Act, 1889, and Regulation 79, must be delivered with the application. The Land Board has no power under sec. 14 to permit them to be supplied subsequently. HEALEY *v.* EGAN, 5 S.R. 107; 22 W.N. 12. [*New South Wales.*]

Married woman—Conditional purchase and lease by.—A married woman living with her husband cannot conditionally purchase or lease Crown lands. The expression "original application," in sec. 17 of 1903 No. 15, means any application for a conditional purchase, lease, &c., and not an application for an original, as distinguished from an additional holding. *Quære*, whether a married woman, being a holder, may apply under sec. 3 of 1903 No. 15. HALL *v.* COSTELLO, 22 W.N. 186; 15 L.C.C. 149. [*New South Wales.*]

—— Conditional lease—Sublease for other than grazing purposes.—An agreement to give a sublease of conditionally leased lands for other than grazing purposes is illegal under the Crown Lands Act, 1884, sec. 98. LANGLEY *v.* FOSTER, 22 W.N. 214. [*New South Wales.*]

Appraisement Act (1902 No. 109), secs. 2, 11 (b)—Application for appraisement—Applicant excused from residence—Definition of holding.—An applicant for appraisement under 1902 No. 109 may apply to be excused from residence upon a holding separate and distinct from that on which he resides. The term holding as used in sec. 11 (*b*) of 1902 No. 109 is confined to the land sought to be appraised and may refer to one or more separate holdings, *i.e.*, holdings which are not contiguous. COVENTRY *v.* MINISTER FOR LANDS, 5 S.R. 111; 22 W.N. 18. [*New South Wales.*]

53 Vic. No. 21, sec. 8—Land Appeal Court—Vacancy in office of President—Order made by two members of Court—Validity.—An order made by two members of the Land Appeal Court in an appeal heard and decided after the death of the President of the Court and before the appointment of his successor, was held to be null and void. *Ex parte* MATTHEWS 5 S.R. 131; 22 W.N. 8. [*New South Wales.*]

Appeal from Land Board—Disallowance of respondent's application—Re-hearing by Land Board.—Where one of two rival applicants appeals from the decision of the Land Board to the Land Appeal Court from the disallowance of his own application and does not appeal against the granting of the respondent's application, the Land Court in sustaining the appeal cannot direct the disallowance of the respondent's application, but must remit the whole matter to be re-heard by the Land Board. HEALEY *v.* EGAN, 5 S.R. 107; 22 W.N. 12. [*New South Wales.*]

Timber and Quarry Regulations—Breach—Exceptions not alleged—Information.—*See* JUSTICES. *Ex parte* MARA, 22 W.N. 149. [*New South Wales.*]

Application—Survey fee and rent—Cash.—Payment by cheque is a payment in cash within secs. 91 and 92 of the Land Act, 1897 (61 Vic. No. 25). *In re* HOBSON, 1905 Q.W.N. 2. [*Queensland.*]

Grant for public reserve. *See* PUBLIC RESERVE.

Lease—Statute of Uses.—A Crown lease is a leasehold, notwithstanding the inchoate right of the lessee to obtain a grant in fee simple, and, therefore, is not within the operation of the Statute of Uses. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

Rents.—Rents in respect of a Crown lease which become payable at the death of a testator, and which are paid by his executrix, to whom a grant in fee simple is thereafter issued, are not "debts" until the payments actually fall due, and therefore are not payable out of a fund provided by the testator for payment of his debts. Such land having been left to tenants for life, with remainders over, such payments of rent are a charge on the land, and the life tenants are bound to keep such charge alive by paying interest. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

Acquired titles.—There is no rigid presumption that a beneficial provision in an Act relating to the alienation for industrial purposes of the property of the Crown does not benefit the holders of acquired titles, similar to the rule which presumptively excludes the retrospective application to acquired titles of an Act in derogation of such titles. EWING *v.* THE SCANDINAVIAN WATER-RACE CO. (REGISTERED), 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

Native lands.—*See* NATIVE LANDS.

LAND APPEAL COURT CASES (N.S.W).

31 Vic. No. 5—Volunteer Land Order—Certificate—Improvements.—The Land Board may impose on a claimant under the Volunteers Land Regulation Act, 31 Vic. No. 5, secs. 44 and 45, the condition of payment for

improvements. *In re* STEWART, 15 L.C.C. 27. [*New South Wales.*]

48 Vic. No. 18—Original non-residential conditional purchase.—Sec. 47 of the Act of 1884, by which an applicant for an original non-residential conditional purchase can obtain 320 acres is not repealed. The Act of 1903 has not affected the holder of such a purchase further than by preventing him from obtaining a total area in excess of the old limit of 320 acres. He still has whatever privileges he possessed before the Act of 1903. *In re* GOGGIN, 15 L.C.C. 289. [*New South Wales.*]

53 Vic. No. 21—Additional conditional purchase—Consent of transferee.—The consent of the manager of the local branch of a bank is not sufficient. *In re* BANK OF AUSTRALASIA, 15 L.C.C. 131; CARO *v.* TAYLOR, 15 L.C.C. 279. [*New South Wales.*]

—— **Additional holding—53 Vic. No. 21, sec. 20—Additional settlement lease.**—Sec. 20 of the Act of 1889, and the case of *Healy* v. *Egan* (5 S.R. 107), do not apply to additional settlement leases. PERROTTET *v.* MCKINNON, 15 L.C.C. 308. [*New South Wales.*]

—— **Annual lease — Appraisement.** — The Board is not bound to determine at the request of the District Surveyor and the lessee, a rent agreed upon by those parties; and it is in the Board's discretion to decline to do so, and to require evidence to be placed before them on which they can determine the rental value of the land. *In re* PATRICK, 15 L.C.C. 43. [*New South Wales.*]

—— **Annual lease—Priority.**—The appellant, being the prior applicant, was *held* entitled to the lands. MUNRO *v.* DONOGHUE, 15 L.C.C. 260. [*New South Wales.*]

58 Vic. No. 18—Homestead selection—Devisee—Additional selection.—Sec. 17 of the Act of 1895 does not make it imperative that a homestead grant should issue only to the original applicant for a homestead selection. The devisee of a homestead selection is entitled to be registered as the holder, and as registered holder to apply for an additional homestead selection. *In re* WESTON, 15 L.C.C. 212. [*New South Wales.*]

—— **Improvement lease—Occupation license.**—The existence of an occupation license does not prevent the grant of an improvement lease. AUSTIN *v.* FORAN, 15 L.C.C. 17. [*New South Wales.*]

—— **Improvement lease—Extension.**—58 Vic. No. 18, sec. 26 (vi), only applies to leases granted under the Principal Acts. Improvement leases cannot be extended. *In re* MURRAY, 15 L.C.C. 14. [*New South Wales.*]

—— **Improvement lease—Land not substantially improvable.**—Land which is not substantially improvable does not come within sec. 26 of the Act of 1895, and cannot be offered to improvement lease. *In re* STEVENSON, 15 L.C.C. 185. [*New South Wales.*]

—— **Residence—Full area.**—The provisions of the Act of 1903, sec. 3, do not affect sec. 30 of the Act of 1895 so as to make the words "full area" in the latter section mean "area sufficient for the maintenance of a home," and therefore a person who has taken up land to the quantities mentioned in sec. 30 of the Act of 1895 is not excused from residence, though he has taken up less than is sufficient for the maintenance of a home. *In re* LONDON BANK OF AUSTRALIA, 15 L.C.C. 189. [*New South Wales.*]

—— **Joint owners.**—One of three joint owners cannot be said to hold the whole of the land jointly owned so as to fall within sec. 41 of the Act of 1895. *In re* WILSON, 15 L.C.C. 151. [*New South Wales.*]

1902 No. 109—Appraisement—Settlement lease—Sale before Crown Lands Act, 1903.—Rent may be appraised on a settlement lease which has been sold before the Act of 1903, but the transfer of which was not registered till afterwards. *In re* CRAIG, 15 L.C.C. 64. [*New South Wales.*]

—— **Rent notified prior to application for additional settlement lease.**—An applicant for appraisement is not debarred by reason of the fact that the rent was notified prior to the date of application for the land. *In re* MCDONALD, 15 L.C.C. 154. [*New South Wales.*]

—— **Road—Travelling stock route.**—A travelling stock route is a road within the meaning of s. 2 of the Appraisement Act, 1902. *Re* TOUT, 15 L.C.C. 126. [*New South Wales.*]

—— **Excuse from residence—Holdings separated by scrub lease.**—*In re* TOUT, 15 L.C.C. 126. [*New South Wales.*]

—— **No requisition.**—The Board has no power to make an appraisement of the annual rent of a settlement lease without any requisition or application by the lessee. *In re* TINK, 15 L.C.C. 262. [*New South Wales.*]

—— **Appeal in respect of some purchases or leases only.**—The Minister is not prevented from appealing against a Borad's appraisement in respect of some of the purchases or leases included in an application. *In re* BOWMAN, 15 L.C.C. 45. [*New South Wales.*]

1903 No. 15—Additional holding — Additional settlement lease—Confirmation of application for original lease—Res judicata.—No person can apply for an additional settlement lease before confirmation of his application for the original settlement lease. *In re*

WALKER, 15 L.C.C. 76; DALY *v.* BOCKHOLT, 15 L.C.C. 172. [*New South Wales.*]

—— **Additional settlement lease—Lands in another State.**—In computing what area is sufficient for home maintenance area, the applicant's lands in another State should be excluded. CHALMERS *v.* ALLITT, 15 L.C.C. 167. [*New South Wales.*]

—— **Executor—Minors.**—An executor cannot apply under sec. 3 of the Act of 1903, where the beneficiaries are minors. *Semble*, an executor is not a transferee within that section. *In re* PARKS, 15 L.C.C. 298. [*New South Wales.*]

—— **Holder.**—A person who has applied for an original conditional purchaseand a conditional lease, and to whom land has been allotted in satisfaction is a holder of the original conditional purchase within the meaning of sec. 3 of the Act of 1903. so as to entitle him to apply for an additional conditional purchase and an additional conditional lease. *In re Evans* (15 L.C.C. 41), followed. MCKEON *v.* HEYWOOD, 15 L.C.C. 22. [*New South Wales.*]

—— **Administrator.**—Application by administrators of deceased holder for additional conditional purchase and conditional lease lands granted though the deceased had no persons to maintain on the land except himself, and had no surviving responsibilities requiring a home to be maintained. *In re* COLWELL, 15 L.C.C. 11. [*New South Wales.*]

—— **Previous application not disposed of.**—The applicant applied for an original homestead selection of 640 acres, which the Board confirmed for 744 acres. By virtue of this he applied on the 1st December, 1904, for an additional homestead selection of 276 acres. On the 29th Dec., 1904, he applied for another additional homestead selection of 350 acres. His application of the 1st Dec. was not confirmed till the 13th April, 1905, when it was confirmed for 282 acres. *Held*, that the application of the 29th Dec., was in contravention of s. 3 (*b*) of the Act of 1903. O'NEIL *v.* LOCKHART, 15 L.C.C. 275; O'SHAUGHNESSY *v.* WHELAN, 15 L.C.C. 283. [*New South Wales*]

A mere direction for survey is not a disposal within sec. 3 of the Act of 1903. O'SHAUGHNESSY *v.* WHELAN, 15 L.C.C. 283. [*New South Wales.*]

—— **Preference—Age of applicant.**—An applicant cannot be deprived of preference on account of his age. ROE *v.* CORBETT, 15 L.C.C. 96. [*New South Wales.*]

—— **Home maintenance—" Thereon ."**—The word " thereon " in sec. 3 (*d*) of the Act of 1903, merely emphasises the condition that the applicant has to be limited to an area on which he can maintain a home. It does not mean that the applicant must reside on the basal holding. PRATT *v.* HUNT, 15 L.C.C. 266. [*New South Wales.*]

—— **Transferee.**—A transferee within the meaning of sec. 3 (*f*) of 1903 No. 15, includes one who acquired an original holding either before or after the commencement of the Act. WALKER *v.* TE KLOOT, 15 L.C.C. 35. [*New South Wales.*]

—— **Transferee—Residence.**—Under sec. 3 (*f*) of 1903 No. 15, it is not enough that a transferee applicant for an additional conditional lease was in residence for the prescribed time, he must have been in residence in the character of holder. VIGAR *v.* WOOD, 15 L.C.C. 25. [*New South Wales.*]

—— **Transferee—Mortgagor.** — Mortgagor *held* not to be a transferee within sec. 3 (*f*) of Act of 1903, and entitled to apply for additional conditional lease. SCUTT *v.* BRIEN, 15 L.C.C. 238. [*New South Wales.*]

Settlement lease—Rent—Three months.—The three months within which a settlement lessee may require his rent to be determined under sec. 5 of 1903 No. 15, runs from the date of confirmation. *In re* CASEY, 15 L.C.C. 23. [*New South Wales.*]

—— Additional settlement lease.—*See In re* WALKER, 15 L.C.C. 76; DALY *v.* BOCKHOLT, 15 L.C.C. 172, *col.* 69. [*New South Wales.*]

Acquisition of other holdings—Transfer—Minors.—*Quære*, where the beneficiary is a minor whether an executor can apply on his behalf to acquire a homestead selection by transfer. *In re* CURTIN, 15 L.C.C. 145. [*New South Wales.*]

Reduction of interest—Conditional purchase—Executor.—An executor may apply to have the interest on a conditional purchase reduced. *In re* WOOLLEY, 15 L.C.C. 157. [*New South Wales.*]

Pastoral lessees—Leases to.—Though the words " such holding," in sec. 18 of the Act of 1903 were probably meant to include the leasehold and the resumed area of a pastoral holding, whether only one is or both are held under an occupation license, the most reasonable construction appears to be one which limits their application to what is actually held. *In re* SCOTTISH AUSTRALIAN INVESTMENT CO., 15 L.C.C. 158. [*New South Wales.*]

Family holdings—Residence—Conditional purchase.—The appellant's father resided on a freehold by virtue of which he made two conditional purchases. The appellant applied to be allowed to fulfil his conditions of residence with regard to his conditional purchase by residing with his father. *Held*, that though taking the father's freehold and conditional purchases together might be said to partake of the character of a conditional purchase, yet under sec. 19 of the Act of 1903 the appli-

cation could not be granted as the holding was not wholly held under conditional purchase. *In re* WILSON, 15 L.C.C. 244. [*New South Wales.*]

Additional conditional purchase—Holder of conditional purchase.—Sec. 30 of the Crown Lands Act, 1903, does not prevent the freeholder who also holds a conditional purchase from applying for an additional conditional purchase. *In re* WRIGHT, 15 L.C.C. 142. [*New South Wales.*]

Practice—Simultaneous applications—Insufficient tender.—Two applicants tendered simultaneously for an additional conditional purchase, one of them tendered an insufficient amount for survey fee. On her attention being drawn to this she tendered the balance, but this was refused and the application of the other applicant was confirmed. *Held*, that both applications must be reheard. *Ross* v. *McIntyre* (11 L.C.C. 255) followed. THOMPSON *v.* ANDERSON, 15 L.C.C. 248. [*New South Wales.*]

——**Simultaneous application—Additional conditional purchase.**—An application for an additional conditional purchase is not made simultaneously with one made two minutes before. COMMERCIAL BANKING CO. OF SYDNEY *v.* DENNING, 15 L.C.C. 128; CARO *v.* TAYLOR, 15 L.C.C. 279. [*New South Wales.*]

—— **Application—Parties.** — Where two persons apply for an additional conditional purchase, the Board should consider the prior application first, and on such application the second applicant is not entitled to be a party and show that the first already has a sufficent area. REYNOLDS *v.* HENNESSY, 15 L.C.C. 202. [*New South Wales.*]

—— **Rehearing—Parties.**—Only such persons as were parties to the original hearing can be parties to the re-hearing. *In re* WESTON, 15 L.C.C. 40. [*New South Wales.*]

—— **Appeal by applicant whose application is invalid.**—The appellant and respondent applied simultaneously for the same land, the appellant's application being invalid. The appellant's application was refused, and the respondent's granted. The appellant appealed on the ground that the respondent's application was lodged without the consent of his mortgagees. *Held*, that the appellant had no interest to sustain his appeal. MCINNES *v.* ROBINSON, 15 L.C.C. 174. [*New South Wales.*]

—— **Appeal—Parties.**—C, an applicant for an additional settlement lease, obtained priority by ballot as to one block. Two other persons applied for other blocks mentioned in C's application, and were refused. They appealed from this refusal. *Held*, that C could not be represented on the appeal. PERROTTET *v.* MCKINNON, 15 L.C.C. 54. [*New South Wales.*]

—— **Appeal—Interest—Parties.**—The appellant's application having been disallowed, *held*, that he had ceased to have an interest to litigate, and could not be regarded as a party to the appeal. TOYNTON *v.* GLEESON, 15 L.C.C. 254. [*New South Wales.*]

—— **Appeal against disallowance of appellant's application only, and not against confirmation of respondent's.**—It is sufficient if the appellant succeeds on his appeal against the disallowance of his own application, though he has not appealed against the confirmation of the respondent's application for the same land. BOLAND *v.* MANCHEE, 15 L.C.C. 304. [*New South Wales.*]

—— **Appeal—Grounds.**—Appeal struck out where the grounds were indefinite and gave the respondents no notice of what they were to answer. GLEESON *v.* TOYNTON, 15 L.C.C. 136. [*New South Wales.*]

—— **Appeal—Preliminary objection.**—A preliminary objection must be taken before argument commences, otherwise it is waived. CHALMERS *v.* ALLITT, 15 L.C.C. 167. [*New South Wales.*]

—— **Appeal—Chairman of Board sitting alone.**—The other members of the Board being unable to sit, the Chairman, at the request of an applicant for leave to fulfil conditions of residence in a certain manner, sat alone. He refused the application, and the applicant appealed. *Held*, that there was nothing to appeal from, the matter should have been referred to the Board. *In re* LUGSDIN, 15 L.C.C. 183. [*New South Wales.*]

—— **Appeal—Notice—Signature.**—Sec. 17 of the Act of 1884 requires that the notice of appeal should be signed either by the party himself or by his authorised agent. MCCALMAN *v.* KENNY, 15 L.C.C. 268. [*New South Wales.*]

—— **Appeal—Notice—Waiver.**— Objection for want of service of notice of appeal, *held*, waived by obtaining adjournment. RAE, RICHARDSON AND RAWSON *v.* CLUFF, 15 L.C.C. 3. [*New South Wales.*]

—— **Direction of Land Appeal Court to Board.**—After a direction of the Land Appeal Court had been given, a case was decided in the Supreme Court, which the Land Board thought to be inconsistent with the direction. *Held*, that nevertheless the Land Board was bound to carry the direction into effect. *In re* GREEN, 15 L.C.C. 250; *In re* HALL, 15 L.C.C. 252; and *see* TOYNTON *v.* GLEESON, 15 L.C.C. 254; GODWIN *v.* SHEPHERD, 15 L.C.C. 263; COWAN *v.* GORDON, 15 L.C.C. 264; *In re* HALL, 15 L.C.C. 317. [*New South Wales.*]

—— **Land Board—Travelling out of reference.**—Where the only question referred to the Land Board was as to the *bona fides* of certain transactions, they cannot refuse a

transfer on the ground that the transferee is not a desirable Crown tenant. *In re* SMITH, 15 L.C.C. 315. [*New South Wales.*]

CROWN LANDS LAW REPORTS. (QUEENSLAND).

Corporation — Selection. — A corporation cannot select land. The policy of the Act as regards selections requires the application to be made by a natural person. *Re* QUEENSLAND INVESTMENT AND LAND MORTGAGE CO., 2 C.L.L.R. 201. [*Queensland.*]

One of two applications invalid. — Where one of two applications was invalid on legal grounds, the other was granted at the proclaimed rent. *Re Alexander* (2 C.L.L.R. 189), followed. *Re* CRAVEN, 1905 Q.W.N. 34; 2 C.L.L.R. 202. [*Queensland.*]

Reconsideration of applications.—Where the Land Court approved of the application of the sole applicant for a grazing homestead, at the tendered and not the proclaimed rent, *held*, that the application could be reconsidered. *Re* ALEXANDER, 1905 Q.W.N. 32; 2 C.L.L.R. 189. [*Queensland.*]

Withdrawal of application by one of two applicants.—Where one of two applicants for a grazing farm withdraws his application before the sitting of the Commissioner's Court, the other is entitled to the land at the proclaimed rental. *Re* ALEXANDER, 1905 Q.W.N. 31; 2 C.L.L.R. 191. [*Queensland.*]

Grazing homestead—Proclaimed rent—Sole applicant.—The sole applicant for land as a grazing homestead is entitled to it at the proclaimed rent, though there are other applicants for the land as a grazing farm. The amount of the tenders is immaterial. *Re* ALEXANDER, 1905 Q.W.N. 32; 2 C.L.L.R. 189. [*Queensland.*]

Leases—Valuation—Letters from lessee.—Lessees should merely put in a valuation. If they desire to bring facts before the Court, they should do so by proper evidence, and not by writing letters to the Court. *Re* JOHNSTON, 2 C.L.L.R. 187. [*Queensland.*]

Resumption — Improvements — Compensation. — Pastoral holdings were resumed, the pastoral lessees being offered an occupation license, which they refused. The lands were then selected, but before the licenses to occupy were granted, the improvements were injured by fire. *Held*, that the lessees were not deprived of the use of the improvements by the mere fact of the resumption having taken place and the land selected. The amount of the depreciation was considered by the Court in favour of the selectors, and it was held that they were not bound to pay the full value of the improvements at the date of selection, as they had no legal right to occupy the land so as to enable them to protect the improvements. Sec. 20 sub-sec. (6) of the Land Act, 1902, does not apply to resumptions under the Crown Lands Acts, 1884 to 1886, but to resumptions of new holdings under the Land Acts, 1897 to 1902. Sec. 8 (3) of the Land Act, 1902, *held* not to apply where the resumption took place before the lessees elected to take advantage of the provisions of that Act. *Re* BULLAMON AND COLLYBEN HOLDINGS, 2 C.L.L.R. 215. [*Queensland.*]

Assessment of improvements—Tank since become useless.—An incoming selector must pay for an improvement which is useful at the time of the license to occupy, though it is subsequently rendered useless. *Re* GRAZING HOMESTEAD No. 1010, 2 C.L.L.R. 204. [*Queensland.*]

Assessment of improvements—Evidence.—The Court may take into consideration the report of the ranger under the Land Act, 1897, sec. 35, though he is not called as a witness. *Re* GRAZING HOMESTEAD No. 1010, 2 C.L.L.R. 204. [*Queensland.*]

Assessment of rent—Evidence.—Speeches from Hansard cannot be read to explain the intention of the Act. In one case the speech of the Minister who introduced the bill was allowed to be read, but it was stated that this was not to form a precedent. *Re* BOATMAN AND MARYVALE HOLDINGS, 2 C.L.L.R. 213; *Re* CURRAWILLINGHI HOLDING, 2 C.L.L.R. 214. [*Queensland.*]

Pastoral holding—Assessment of rent—Evidence.—On the assessment of rent for a term of a lease of a pastoral holding, the Commissioner's reports on the assessment of rent for a previous term is not admissible. *Re* TINTINCHILLA HOLDING, 2 C.L.L.R. 188. [*Queensland.*]

Evidence of the amount of the rents paid in New South Wales is not admissible. *Re* TINTINCHILLA HOLDING, 2 C.L.L.R. 188. [*Queensland.*]

CUSTOMS.

Dairying purposes—Engines and boilers.—In order that engines or boilers may come within the exemption allowed by Schedule A to the Customs Duties Act Amendment Act, 1900, it is not necessary to show that the engines were ordered for dairying purposes, nor that they were imported solely or exclusively for dairying purposes. Whether they are "imported specially for dairying purposes" must depend on the circumstances of the case, but the clearest evidence is necessary to show that as a fact the goods were imported for the special purpose, and evidence of undisclosed, or partially disclosed, or doubtful intention would properly be rejected as insufficient. JOHN CHAMBERS & SON *v.* CHAMBERLAIN, 24 N.Z.L.R. 776; 7 Gaz. L.R. 654. [*New Zealand.*]

Insecticide — Tanglefoot. —"Tanglefoot," sticky flypaper, is not liable to duty under the Federal Customs Tariff Act (1902 No. 14). MARKWELL *v.* LOCKYER, 22 W.N. 198. [*New South Wales.*]

Mining machinery.—A steam-engine was a steam-engine working a pump in a mine-shaft. The engine, being at the top of the shaft is not exempt from duty as "a steam-pump for mining purposes." Machines and parts of machines imported for use in a foundry in the manufacture of mining machinery are not exempt as mining machinery. THE WAIHI GOLD-MINING COMPANY, LTD. *v.* THE COLLECTOR OF CUSTOMS, AUCKLAND, 24 N.Z.L.R. 349; 7 Gaz. L.R. 173. [*New Zealand.*]

Patent medicines—Dispute.—In order to bring medicines within sec. 5 of the Customs and Excise Duties Act, 1895, it is essential that at the time of their importation in bulk they should come within the designation of a patent or a proprietary medicine, although when imported they may not have been in a state fit for sale as such medicine, or may have required some further preparation or ingredient before being in a fit state for retail sale as such medicine. A dispute as to whether certain pills come under the heading of patent or proprietary medicines or druggists' sundries is a dispute within sec. 52 of the Customs Laws Consolidation Act, 1882, and does not come within sec. 46 of that Act. KEMPTHORNE, PROSSER & CO.'S NEW ZEALAND DRUG CO., LTD. *v.* CHAMBERLAIN, 24 N.Z.L.R. 205; 7 Gaz. L.R. 296. [*New Zealand.*]

Meaning of "passenger."—A member of the crew of a ship is not a "passenger" within the meaning of sec. 41 of the Customs Act, 1901. DONOHOE *v.* AFALEE, 22 W.N. 23. [*New South Wales.*]

False declaration—Mens rea—Excise Act, sec. 120.—A coloured servant cut grass in a certain paddock, for the purpose of saving sugar-cane in that paddock from danger of fire. He was employed to do acts of a similar nature, but had been expressly forbidden to cut the grass in that particular paddock. The master claimed a bounty on the sugar as having been produced by the employment of white labour only, and made a declaration to that effect. There was no evidence that he knew that the servant had cut the grass. He was prosecuted for, and convicted of making a false declaration under the Excise Act, 1 Edw. VII., No. 9 of 1901. The conviction was quashed. WALKER *v.* CHAPMAN, 1904 S.R. (Q.) 330; Q.W.N. 83. [*Queensland.*]

Special case—Determination of question of law.—The question whether goods are "personal baggage" within the meaning of s. 41 of the Customs Act (1901 No. 6), is a question of law which may form the subject of a special case under the Justices Act. DONOHOE *v.* AFALEE, 22 W.N. 23. [*New South Wales.*]

Evidence—Onus of proof—Excise Act, 1901, sec. 144.—Sec. 144 of the Excise Act, 1901, which enacts that the averments in an information shall be deemed to be proved unless the contrary is shown, does not cast on the accused the burden of proving innocence. It is only *prima facie* evidence of the charge and if evidence is given for the defence which leaves the question of guilt in doubt, the accused is entitled to an acquittal. WALKER *v.* CHAPMAN, 1904 S.R. (Q.) 330; Q.W.N. 83. [*Queensland.*]

Customs Act, 1901 No. 6, sec. 41.—Appeal under Justices Act.—*See* JUSTICES. DONOHOE *v.* AFALEE, 22 W.N. 23. [*New South Wales.*]

DAMAGES.

Misdirection as to. — *See* NEW TRIAL. TONKIN *v.* JUMBUNNA COAL MINE CO., 27 A.L.T. 99; 11 A.L.R. 454. [*Victoria.*]

Purchaser of shares in company from person not entitled thereto.—*See* COMPANY. DAILY TELEGRAPH NEWSPAPER CO. *v.* COHEN, 5 S.R. 520; 22 W.N. 172. [*New South Wales.*]

Breach of contract.—*See* CONTRACT.

Void contract.—*See* LOCAL GOVERNMENT. MCEWAN *v.* CHAIRMAN, &C., OF COUNTY OF SOUTHLAND, 24 N.Z.L.R. 652; 7 Gaz. L.R. 538. [*New Zealand.*]

For injury by dog.—*See* ANIMAL. MCKINNON *v.* DWYER, 27 A.L.T. 111; 11 A.L.R. 449. [*Victoria.*]

For infringement of patent.—*See* PATENT. WELSBACH LIGHT CO. OF AUSTRALASIA *v.* LOCHHEAD, 24 N.Z.L.R. 51; 7 Gaz. L.R. 13. [*New Zealand.*]

Breach of warranty.—*See* SALE OF GOODS. DEMPSTER *v.* SIMPSON, 7 W.A.L.R. 103. [*Western Australia.*]

DEATH.

Presumption of.—*See* EVIDENCE. *In re* BUCK; SNELSON *v.* BUCK, 24 N.Z.L.R. 148. [*New Zealand.*]

DEATHS BY ACCIDENT COMPENSATION.

See MASTER AND SERVANT.

DEBENTURES.

See BANK. BANK OF NEW ZEALAND *v.* ASSETS REALISATION BOARD, 7 N.Z. Gaz. L.R. 483. [*New Zealand.*]

DEBT.

Assignment.—*See* ASSIGNMENT.

Hospitals Act—Contribution—Action for debt.—Action for contribution under Hospitals and Charitable Institutions Act, sec. 74. *See* HOSPITALS AND CHARITABLE INSTITUTIONS ACT. WAIRAU HOSPITAL, &C. BOARD *v.* PICTON HOSPITAL, &C. BOARD, 24 N.Z. L.R. 45. [*New Zealand.*]

DECEASED PERSONS' ESTATES DUTIES.

See STAMP DUTIES.

DECEIT.

See FRAUD.

DECIDED CASES.

Long established case.—Where the ruling of a State Supreme Court has been acted upon for a very long period, *e.g.*, fifty years, it will be treated as having established the law of the State, and will be adopted by the High Court. DARBYSHIRE *v.* DARBYSHIRE, 2 C.L.R. 787; 1905 V.L.R. 239; 26 A.L.T. 128; 11 A.L.R. 14, 417. [*Victoria.*]

DEED AND BOND.

Performance of contract—Money bond—Rule 490 of Code of Civil Procedure.—A contractor with a borough for the erection of a gasholder, having failed to complete within the prescribed time, and having thereby incurred penalties, agreed to do certain things and gave a bond to secure the performance of this agreement. This agreement he substantially fulfilled, but the council's engineer could not and did not certify in the terms of the bond that no loss had been incurred by reason of the non-delivery of the gasholder within the time originally contracted for. The council sued for the full amount of the bond. The statement of claim did not set forth particulars of the breaches complained of, nor was it endorsed with a claim for actual damages sustained, and no particular breaches or damages, were proved at the trial. *Held*, that the bond was not a money bond, and non-compliance with r. 490 of the Code of Civil Procedure was fatal to the success of the action. MAYOR, &C., OF PETONE *v.* PALMER, 7 N.Z. Gaz. L.R. 420. [*New Zealand.*]

Executed without consent of other party.—*See* SMALL DEBTS RECOVERY. *Ex parte* NOEL, 5 S.R. 445; 22 W.N. 131. [*New South Wales.*]

Rectification of trust deed.—*See* CHARITY.

Estoppel by.—*See* ESTOPPEL.

Appointment.—*See* POWER OF APPOINTMENT.

Registration. — *See* REGISTRATION OF DEEDS.

Of assignment.—*See* BANKRUPTCY AND INSOLVENCY.

DEFAMATION.

Reference to plaintiff.—*Semble*, where the words of an alleged libel do not unambiguously refer to the plaintiff, the defendant may call witnesses to prove that they read the libel and did not understand it to refer to the plaintiff. Decision of the Supreme Court ([1904] 4 S.R. (N.S.W.) 327), reversed. GODHARD *v.* JAMES INGLIS & CO., LTD., 2 C.L.R. 78. [*New South Wales.*]

Libel on class.—The writer of matter defamatory of a class of persons, personally unknown to him, but so described that their identity is apparent to everybody who knows them and is familiar with the circumstances, is liable in an action for libel brought by any member of the class defamed. The defendants published a defamatory article, directed against certain companies known as coupon companies, and the persons responsible for their management, but making no direct reference to the plaintiff, who was the sole director and principal shareholder in one of the largest of these companies. At the trial, the defendant's manager, the writer of the article, stated that the article was intended to be a criticism of the system followed by the companies, but admitted that it contained imputations against the owners or promoters, those who were carrying on the business. He went on to say that, when he wrote the article, he was not aware that the plaintiff was in any way associated with coupon companies, though he knew of the existence of the particular company to which the plaintiff belonged. The Judge directed the jury that the plaintiff must prove that the writer of the libel had the plaintiff in his mind when he wrote the article, and intended it to refer to the plaintiff, and that if the writer knew nothing of the plaintiff, and had no intention of applying the article to him, they must find for the defendants. *Held*, that this was a

misdirection, as it was immaterial in such a case, whether or not the defendant, when he published the libel, had in his mind the individuality of the plaintiff. *Bromage* v. *Prosser* (4 B. & C. 247), distinguished. *Le Fanu* v. *Malcolmson* (1 H.L.C. 637), considered and applied. GODHARD *v.* JAMES INGLIS & CO., LTD., 2 C.L.R. 78. [*New South Wales.*]

Slander on bookmaker.—Defamatory words spoken of a bookmaker in reference to his calling are actionable without proof of special damage. SOLOMON *v.* KENDALL, 26 A.L.T. Supp. 1. [*Victoria.*]

Privilege.—A person in the employ of the proprietors of a totalisator, charged the plaintiff, upon the racecourse, with forging a totalisator ticket which he (the plaintiff) had just presented at the totalisator. *Held*, that the defendants had a right to speak to the plaintiff upon the matter, and that, as they had acted *bona fide*, and what was said had not been said in a loud tone so as to attract the attention of passers-by, the words were not actionable even if they had been heard by others (of which however there was no sufficient proof). *Toogood* v. *Spyring* (1 Cr. M. & R. 181), and *Hodges* v. *Glass* (O.B. & F. (S.C.) 66), followed. MACINTOSH *v.* COHEN AND OTHERS, 24 N.Z.L.R. 625. [*New Zealand.*]

—— **Lodging-house keeper.**—The defendant, a lodging-house keeper, addressed the following words to some of her guests:—"You had better see that nothing is missing from your room, because I went upstairs just now, and saw Miss Miller in a gentleman's room going through the pockets of his clothes." *Held*, that in the absence of malice the defendant was privileged to speak the words to her guests, as they had a common interest in protecting the lodgers' property. MILLER *v.* ARMSTRONG, 8 N.Z. Gaz. L.R. 76. [*New Zealand.*]

1901 No. 22, secs. 6, 13—Plea of truth and public benefit—Method of publication.—To sustain a plea of truth and that it was for the public benefit that the matter should be published, it is not necessary to prove that the matter was published to the public at large. Publication by one individual to another in a private and confidential letter may be sufficient. GLISSAN *v.* CROWLEY, 5 S.R. 219; 22 W.N. 100. *But see* 2 C.L.R. 744. [*New South Wales.*]

—— **Defendant's intention.**—In considering the question whether the publication of defamatory matter was for the public benefit within the meaning of sec. 13 of the Defamation Act, 1901 No. 22, the motive or intention of the defendant in making the publication is immaterial, but the jury should consider whether the nature and manner of the particular publication were such as would benefit the public. Decision of the Supreme Court, *Glissan* v. *Crowley* ([1905] 5 S.R. (N.S.W.) 219), reversed. CROWLEY *v.* GLISSAN, 2 C.L.R. 744; 5 S.R. 219; 22 W.N. 100. [*New South Wales.*]

Liability of corporation.—*See* CORPORATION. BROWN *v.* CITIZENS' LIFE ASSURANCE CO., LTD., 4 S.R. 642. [*New South Wales.*]

Arrest—Taking out ca. sa. after proceeding in bankruptcy.—*See* ARREST. FERRIS *v.* MARTIN; MARTIN *v.* FERRIS, 2 C.L.R. 525; 11 A.L.R. 470; 5 S.R. 287; 22 W.N. 52, 90. [*New South Wales.*]

Stay of vexatious action.—*See* PRACTICE. AVERY *v.* SYDNEY HARBOUR TRUST COMMISSIONERS, 22 W.N. 54. [*New South Wales.*]

Statement of claim. — *See* PLEADING. MCCRACKEN *v.* WESTON, 24 N.Z.L.R. 248. [*New Zealand.*]

Particulars.—The action was for damages for slanderous words alleged to have been spoken of the plaintiff on a race course on the 26th of March, 1904, "in the presence of a large number of persons there assembled." The defendant, after filing a statement of defence, took out a summons for particulars of the names of the persons to whom the slanderous words were alleged to have been published. *Held*, that the plaintiff must disclose the names of persons present known to him. MCKINNON *v.* BARRY, 7 N.Z. Gaz. L.R. 69. [*New Zealand.*]

Misdirection—New trial.—Where there has been an erroneous direction, which may have been the foundation of the jury's verdict, and it is impossible to say whether the verdict proceeded upon the erroneous direction, or upon the ground that, under all the circumstances, the libel was justified, there must be a new trial. GODHARD *v.* JAMES INGLIS & CO., LTD., 2 C.L.R. 78. [*New South Wales.*]

Prosecution for libel—Reasonable cause.—*See* MALICIOUS PROSECUTION.

DEFENCE ACT.

Actual service—Military duty.—"Actual service" under the Defences Act, 1895, means military service in case of invasion, or expected invasion, that is, in time of war, or in the event of rebellion or insurrection. In construing sec. 58 of the Defences Act, 1895, the heading to the section, and the section itself, are to be read together; and, consequently, in order to maintain a claim for compensation under that section, it is necessary that the officer or soldier killed or injured shall have been so killed or injured whilst engaged, not only in the performance of military duty, but also on actual service. The plaintiff, who held a commission from the Governor as surgeon-major in the Medical Staff Corps of the South Australian Military

Forces, had made the declaration mentioned in sec. 18 of the Defences Act, 1895, but never subscribed an attestation paper in accordance with that section, no attestation paper having ever been prescribed for officers. As surgeon-major he had been attached as medical officer to the second South Australian contingent for the South African war until its departure from South Australia, but he was not a member of the contingent, and did not intend to proceed with it to South Africa. Whilst on a route march from Adelaide to Marino with the contingent, and whilst so attached as aforesaid, the plaintiff was thrown from his horse and seriously injured. The plaintiff having claimed compensation for such injuries from the Government of South Australia under sec. 58 of the Defences Act, 1895, *held*, that, in spite of the omission to prescribe an attestation paper for officers, the plaintiff was an officer of the South Australian Military Forces. *Held, also*, that, although the plaintiff had been injured in the performance of military duty, he was not at the time of the injury on actual service within the meaning of the Defences Act, 1895, and his claim therefore failed. "Military duty," under the Defences Act, 1895, is not limited merely to the duties imposed by secs. 19, 25, 26 and 55. NAPIER *v.* SHOLL, 1904 S.A.L.R. 73. [*South Australia.*]

DEMURRER.

See PLEADING.

DESERTED WIVES AND CHILDREN.

Constructive desertion — Violence — Evidence. — A statement by a wife that she was compelled to leave home through the husband's violence, is no evidence of constructive desertion. She must show that the violence was such as to cause apprehension of personal danger, or that it otherwise justified her in living apart from her husband, nor is such evidence assisted by the fact that the husband made no reply to a letter from her wherein she complained of his ill-treatment, for silence under such circumstances does not amount to an admission. CLAXTON *v.* CLAXTON, 1905 S.R. (Q.) 87; Q.W.N. 37. [*Queensland.*]

Destitute person—Wife having maintenance order.—*Quære*, whether a wife in whose favour a maintenance order has been made against her husband under the Destitute Persons Act, 1894, is a "destitute person" within the meaning of sec. 24 of that Act, under which the magistrate making any order under the Act "touching the maintenance of any destitute person or child" may direct it to be filed in the Supreme Court, whereupon it is to have priority as therein mentioned. *In re* BECK; *Ex parte* BECK, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104. [*New Zealand.*]

—— **Wife not destitute.**—*Semble*, sec. 25 of the Destitute Persons Act, 1894, does not extend to orders made under sec. 18 in favour of a wife unless she is a destitute person. SMITH *v.* SMITH, 7 N.Z. Gaz. L.R. 540. [*New Zealand.*]

Bankruptcy of husband.—*Quære*, whether amounts payable in the future under an order made under the Destitute Persons Act, 1894, which amounts are to be payable only until the order is discharged or varied, are a debt provable in bankruptcy. If they are, the debt is one the value of which is incapable of being fairly estimated, and therefore comes within sub-sec. 3 of sec. 109 of the Bankruptcy Act, 1883. *In re* BECK; *Ex parte* BECK, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104. [*New Zealand.*]

The words of sec. 24 of the Destitute Persons Act, 1894, "shall have priority over all other liabilities," were not designed to destroy the priorities that are given in bankruptcy under the Bankruptcy Act, 1883, nor was it intended that there should be a priority in bankruptcy for what is under such an order a contingent debt. It may be, however, that (if the section applies to the case of a wife at all) she is entitled to priority for any sum that may have actually become due to her and to her children up to the time of the bankruptcy. *In re* BECK; *Ex parte* BECK, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104. [*New Zealand.*]

Summons — Corroboration — Evidence. — Upon an application for a summons against the putative father of an unborn child under s. 4 of the Infant Protection Act, it is not necessary that the corroborative evidence as to paternity should be reduced to writing and sworn as a deposition. *Ex parte* ANDERSON, 5 S.R. 448; 22 W.N. 121. [*New South Wales.*]

Evidence that the alleged father of an illegitimate child was seen in company with the child's mother on the evening on which intercourse was alleged by her to have taken place resulting in the birth of the child, *held*, not to amount to corroboration as to paternity within the meaning of sec. 8 of the Infant Protection Act, 1904. If a summons is issued under sec. 8 of the Act without evidence of corroboration the defendant may at once apply for a prohibition. If the defendant appears and pleads to the information it is the duty of the adjudicating magistrate under sec. 9 to hear and determine the complaint, without deciding whether evidence of corroboration was given prior to the issue of the summons as required by sec. 8. *Ex parte* JACKSON, 22 W.N. 30. [*New South Wales.*]

The requirements of sec. 8 of Act No. 1684 are satisfied if there is, besides the evidence of the woman, other evidence more consistent with the defendant being the father of the

child, than of his innocence in that respect. Direct independent evidence is not necessary. GROCOCK *v.* STEVENSON, 1905 V.L.R. 536; 27 A.L.T. 21; 11 A.L.R. 274. [*Victoria.*]

—— **Onus of proof.**—In maintenance cases, where it appears that the husband and father is apparently in good health, physically and mentally, the onus is cast upon him of satisfying the Court that he cannot work to support his wife and children. SINCLAIR *v.* SINCLAIR (2), 26 A.L.T. Supp. 8; 11 A.L.R. (C.N.) 37. [*Victoria.*]

—— **Death of mother—Statement of mother.**—Where the mother of an illegitimate child makes a statement on oath as to the paternity of the child, and proceedings under sec. 9 of the Destitute Persons Act, 1894, are after her death commenced against the alleged father of such child, the sworn statement of the mother is admissible as evidence under sec. 42 of the Act, not only in the proceedings before the magistrate, but also on appeal. DORMER *v.* TAYLOR, 7 N.Z. Gaz. L.R. 148. [*New Zealand.*]

Form of order.—It is unnecessary to state in an order that the magistrate found that the matters alleged in the complaint had been proved. SMITH *v.* SMITH, 7 N.Z. Gaz. L.R. 540. [*New Zealand.*]

Held, that an order under sec. 25 for imprisonment in the event of default being made should have been an order for imprisonment for a period not exceeding six months, if such order be not sooner complied with, but, *semble*, that the defect in the order in this respect was one which could be corrected under the Courts of Justice (Technical Defects Removal) Act, 1892. SMITH *v.* SMITH, 7 N.Z. Gaz. L.R. 540. [*New Zealand.*]

Prematernity order—Form—Setting out—Evidence.—*Ludgrave* v. *Belcher* (5 A.L.T. 72), not followed. GROCOCK *v.* STEVENSON, 27 A.L.T. Supp. 5; 11 A.L.R. (C.N.) 61. [*Victoria.*]

Desertion of wife and children.—Order covering separate matters.—Intended desertion of a wife is a separate matter from intended desertion of children, and an order covering more than one matter of complaint in these respects is bad. *R.* v. *Slater; Ex parte Bowler* (67 J.P. 299), followed. SMITH *v.* SMITH, 7 N.Z. Gaz. L.R. 540. [*New Zealand.*]

Order—Filing in Supreme Court.—It is not necessary that the clerk of the Court should personally tender an order for filing in the Supreme Court, under sec. 24 of the Destitute Persons Act, 1894. *In re* BECK; *Ex parte* BECK, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104. [*New Zealand.*]

Maintenance order—When to cease.—The fact that a child for whose support a maintenance order had been made has reached the age of fifteen, *held*, no reason for setting aside a maintenance order. MCCARTHY *v.* O'BRIEN, 11 A.L.R. (C.N.) 34; 27 A.L.T. Supp. 2. [*Victoria.*]

—— **Costs.**—The magistrate has jurisdiction to order the defendant to pay costs. SMITH *v.* SMITH, 7 N.Z. Gaz. L.R. 540. [*New Zealand.*]

Appeal—Prohibition—Evidence of mother.—The words in sub-sec. 5 of sec. 9 of the Destitute Persons Act, 1894: "the Court hearing any appeal against an order made under this section shall hear the evidence of the mother"; must be read "the Court hearing any appeal against an order made under this section may hear the evidence of the mother." The proviso at the end of sub-sec. 5 applies only when the mother is called as a witness. *R.* v. *Armitage* (42 L.J.M.C. 15), distinguished. DORMER *v.* TAYLOR, 7 N.Z. Gaz. L.R. 148. [*New Zealand.*]

—— **To General Sessions.** — Courts of General Sessions have no jurisdiction to suspend maintenance orders of justices pending appeal. SINCLAIR *v.* SINCLAIR, 26 A.L.T. Supp. 7; 11 A.L.R. (C.N.) 29. [*Victoria.*]

—— **Statutory prohibition—Common law prohibition—Right of appeal.**—The Court constituted by virtue of the Infant Protection Act, 1904, is not a Court of Petty Sessions, and there is no appeal by way of statutory prohibition under the Justices Act, 1902. Parties have the right to appeal—(1) To a Court of Quarter Sessions; (2) By way of a common law prohibition if the Court exceeded its jurisdiction. *Ex parte* STARK, 5 S.R. 458; 22 W.N. 133. [*New South Wales.*]

—— **Special case.—Justices Act (1902 No. 27), sec. 101.**—There is no appeal by way of special case under the Justices Act from the determination by a magistrate of a complaint under the Infant Protection Act, 1904. WHARTON *v.* SCHOFIELD, 22 W.N. 38. [*New South Wales.*]

—— **Delay.**—Appeal from maintenance orders struck out for delay. ALLARDICE *v.* ALLARDICE, 26 A.L.T. Supp. 7; 11 A.L.R. (C.N.) 33. [*Victoria.*]

Quashing and varying maintenance orders.—Applications to quash or vary orders of justices under s. 52 of the Marriage Act, 1890, must not be for the purpose of reviewing the decision of the justices. The grounds must consist of matters distinct from those enquired into before the justices. ALLARDICE *v.* ALLARDICE, 26 A.L.T. Supp. 7; 11 A.L.R. (C.N.) 33. [*Victoria.*]

DESTITUTE PERSONS.

See DESERTED WIVES AND CHILDREN.

DETINUE.

Verdict over £30—Return of goods.—*See* COSTS. EGAN *v.* PIGOTT, 21 W.N. 251. [*New South Wales.*]

DISCONTINUANCE.

See PRACTICE.

DISCOVERY AND INSPECTION.

Against Commonwealth.—Sec. 64 of the Judiciary Act, 1903, provides that in suits to which the Commonwealth is a party the rights of parties shall as nearly as possible be the same as in a suit between subject and subject. Sec. 102 of the Common Law Procedure Act (N.S.W.), (No. 21 of 1899), provides that on application of either party to an action the Court or a Judge may order that "the party against whom the application is made, or if such party is a body corporate, some officer to be named of such body corporate," shall answer on affidavit as to documents in his possession relating to the matters in dispute. *Held*, that the Supreme Court of New South Wales has no jurisdiction, in an action brought in that Court by an individual against the Commonwealth, to make an order for discovery of documents against the defendant. Decision of A. H. Simpson J. (22 N.S.W.W.N. 5), reversed. COMMONWEALTH *v.* BAUME, 2 C.L.R. 405; 11 A.L.R. 124; 22 W.N. 5. [*New South Wales.*]

Order against corporation.—An order for discovery against a corporation ordering the corporation and not the officer of the corporation to make the affidavit in answer is bad. Filing an affidavit in answer, claiming privilege is no waiver of the objection—County Courts Act, 1890, s. 79. BARRIE *v.* VICTORIAN RAILWAY COMMISSIONERS, 26 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 41. [*Victoria.*]

Affidavit in support.—An order for discovery made on the affidavit of the legal practitioner, and not on that of the party, is bad. (County Courts Act, 1890, sec. 79.) Filing an affidavit in answer claiming privilege is no waiver of the objection. BARRIE *v.* VICTORIAN RAILWAY COMMISSIONERS, 26 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 41. [*Victoria.*]

Common Law Procedure Act (1899 No. 20), sec. 102—Right to discovery—Libel action—Before and after declaration.—A party who brings himself within the provisions of s. 102 of the C.L.P. Act is entitled to a discovery order as a matter of right, whether before declaration or after. MACINTOSH *v.* DUN, 5 S.R. 99; 22 W.N. 19. [*New South Wales.*]

Mining—Drainage—Maps and plans.—A mining company which is called upon by an adjacent company to contribute, under sec. 200 of the Mining Act, 1898, to the costs of drainage which it is alleged benefits the defendant company's mine, is entitled to inspect maps and plans showing the plaintiff company's workings, &c., for the purposes of the action. THE WAIHI GOLD-MINING CO., LTD. *v.* THE WAIHI GRAND JUNCTION GOLD COMPANY, LTD., 24 N.Z.L.R. 208; 7 Gaz. L.R. 321. [*New Zealand.*]

Privilege — Reports by agent. — Reports made to the defendant by his agents before action "for the purpose of being communicated to the defendant's solicitors with the object of obtaining their advice and in the event of litigation to be used by them for the purpose of prosecuting or defending any action and for no other purpose," *held*, to be privileged from inspection. *Southwark and Vauxhall Water Co.* v. *Quick* (3 Q.B.D. 315), followed; *Wheeler* v. *Le Marchant*, (17 Ch. D. 675), distinguished. BARTRAM *v.* CLARK & SON, PROPRIETARY, 1905 V.L.R. 442; 27 A.L.T. 4; 11 A.L.R. 304. [*Victoria.*]

—— **Documents for legal advice.**—Documents prepared in relation to an intended action, whether at the request of a solicitor or not, are privileged, if prepared with a *bona fide* intention at being laid before him for the purpose of taking his advice. THE WAIHI GOLD-MINING CO., LTD. *v.* WAIHI GRAND JUNCTION GOLD CO., LTD., 7 N.Z. Gaz. L.R. 482. [*New Zealand.*]

—— **Affidavit claiming.**—A party claiming privilege upon the ground that documents relate exclusively to his own case, must swear that to the best of his belief the documents in respect of which he claims privilege, form or support, or evidence, or relate exclusively to his own case or title; that they contain nothing supporting, or tending to support, his adversary's case or title, and that they contain nothing impeaching his own case or title. WAIHI GOLD-MINING CO., LTD. *v.* WAIHI GRAND JUNCTION GOLD CO., LTD., 7 N.Z. Gaz. L.R. 482. [*New Zealand.*]

In District and County Courts.—*See* DISTRICT AND COUNTY COURTS.

DISCRIMINATION.

See FEDERAL LAW. DAVIES *v.* STATE OF WESTERN AUSTRALIA, 2 C.L.R. 29; 11 A.L.R. 73. [*Western Australia.*]

DISTRICT AND COUNTY COURTS.

JURISDICTION—"Material point."—Non-payment which is a breach of an implied promise to pay is a "material point" within sec. 60 (2) of the District Court Act, 1891 (55 Vic. No. 33). The plaintiff residing at Brisbane, instructed the defendant, residing at Maryborough, to sell the plaintiff's boat, then at Maryborough. This the defendant did, and on his failure to pay the proceeds and action brought therefor, *held*, that the District Court of Brisbane had jurisdiction to try the case. CLARKE *v.* CLARKE, 1905 Q.W.N. 11. [*Queensland.*]

—— **Bankruptcy.**—*See* BANKRUPTCY AND INSOLVENCY. *In re* EWING, 24 N.Z.L.R. 808. [*New Zealand.*]

—— **No jurisdiction—Striking out case.**—*See striking out case. Col.* 88.

SUMMONS—Special — Return day. — MCCRACKEN'S CITY BREWERY CO. *v.* CASEY, 27 A.L.T. Supp. 4; 11 A.L.R. (C.N.) 45. [*Victoria.*]

—— **Ordinary — Debt or liquidated demand only.**—*See* ROGERS *v.* HUGHES, 27 A.L.T. Supp. 4; 11 A.L.R. (C.N.) 25. [*Victoria.*]

PLAINT — Particulars. — A plaint in the County Court set out that the defendant was the owner of a certain mine, that the plaintiff was employed in such mine by the defendant, as a miner, and that an accident occurred in such mine while the plaintiff was so employed whereby the plaintiff suffered injury in person. *Held*, that the plaintiff was properly ordered to give particulars of the negligence (if any), alleged, and of the rules (if any), alleged not to have been observed. *Laurenson* v. *Count Bismark Gold-Mining Co.*, (4 V.L.R. (L) 83), discussed. NEVILLE *v.* LORD NELSON GOLD-MINING CO., 1905 V.L.R. 242; 26 A.L.T. 160; 11 A.L.R. 83. [*Victoria.*]

DEFENCE—Application for leave to defend.—*See* WOOLF *v.* CRABBE, 27 A.L.T. Supp. 7; 11 A.L.R. (C.N.) 50. [*Victoria.*]

—— **Statutory defence.**—In an action for false imprisonment the defence that the defendant was acting in pursuance of the powers given by sec. 82 of the Police Offences Act, 1890, is a statutory defence within the meaning of r. 66 of the County Court Rules, 1891. FITZGIBBON *v.* COBBLEDICK, 27 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 37. [*Victoria.*]

—— **Counter claim.**—Rule 70 of the County Court rules does not apply where the plaintiff's claim is struck out. ROGERS *v.* HUGHES, 26 A.L.T. 4; 11 A.L.R. (C.N.) 25. [*Victoria.*]

DISCOVERY—Affidavit.—An application for discovery must identify the defendant as a party to the proceedings. Thus, if he has been sued in a wrong name, he must use his true name, but show that he is the party referred to in the summons. *Re* MACINTOSH, 11 A.L.R. (C.N.) 41; DISCOVERY OF DOCUMENTS, 26 A.L.T. Supp. 2. [*Victoria.*]

—— **Form of order.** — Form 32 in the Schedule to the Act should be altered by inserting the words "after service upon him of this order" after the words "do within ——— days." *Re* MACINTOSH, 11 A.L.R. (C.N.) 41; DISCOVERY OF DOCUMENTS, 26 A.L.T. Supp. 2. [*Victoria.*]

INTERPLEADER—Debt.—R. 230 of the County Court Rules, 1891, applies where the defendant has notice of a conflicting claim to part only of the debt. GARRETT *v.* MCGUINNESS, 27 A.L.T. Supp. 8; 11 A.L.R. (C.N.) 57. [*Victoria.*]

—— **Appeal.**—An appeal lies under sec. 108 from an order made in an interpleader issue. COGHLAN *v.* ALEXANDER, 5 S.R. 441; 22 W.N. 128. [*New South Wales.*]

—— **Amendment of particulars of claim.**—R. 236. HOLBROOK *v.* HAYES, 26 A.L.T. Supp. 2; 11 A.L.R. (C.N.) 41; GILL *v.* GILL, 27 A.L.T. Supp. 7; 11 A.L.R. (C.N.) 53. [*Victoria.*]

—— **Claim struck out for want of particulars—Costs.**—LILLICRAPP *v.* O'DONAHOO. 27 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 41, [*Victoria.*]

INTERROGATORIES.—Oral examination.—*See* WARNECKE *v.* DARBYSHIRE, 11 A.L.R. (C.N.) 64. [*Victoria.*]

STRIKING OUT CASE.—The power under sec. 94 of the County Courts Act, to strike out a case which the Court has no jurisdiction to hear, and award costs to the defendant, is limited to cases within sec. 48 of the Act, where express power is given to create jurisdiction by consent, and does not apply to cases which the Court has absolutely no

jurisdiction to hear. HARRISON, SAN MIGUEL & Co. *v.* MADDERN, 1905 V.L.R. 400; 26 A.L.T. 215; 11 A.L.R. 178. [*Victoria.*]

FILING OF DOCUMENTS.—Copies of documents served *inter partes* should be filed. SHANAHAN *v.* NICHOLLS, 27 A.L.T. Supp. 8; 11 A.L.R. (C.N.) 63. [*Victoria.*]

JURY—Leave to pay fee nunc pro tunc.—R. 186. *See* MALESHEFF *v.* KREITZER, 26 A.L.T. Supp. 2; 11 A.L.R. (C.N.) 25. [*Victoria.*]

—— **Increased allowance.**—Increased compensation may be allowed to jurymen in the civil sittings of the District Court. PHILLIPS *v.* TAYLOR, 1905 Q.W.N. 21. [*Queensland.*]

NEW TRIAL AND APPEAL—In what cases.—The unsuccessful party to an action tried in the County Court (Victoria), with a jury, may apply under sec. 96 of the County Court Act, 1890, for a new trial on the ground of misdirection in law, although no objection to the charge was taken before verdict, and an appeal lies to the Full Court from the refusal of the Judge, on a subsequent motion to grant the new trial; it is not necessary in such circumstances, that leave should be applied for, or reserved, at the trial to move for judgment, and that the judgment actually entered should, if adverse, be appealed against, although, *semble*, that such a course is competent. *Hundley* v. *London, Edinburgh and Glasgow Assurance Co.* [1902] 1 K.B. 350), followed. BROWN *v.* LIZARS, 1905 V.L.R. 165, 540; 26 A.L.T. 159; 11 A.L.R. 42, 345. [*Victoria.*]

The power given to a Judge of the County Court by sec. 96 of the County Court Act, 1890, to grant a new trial must be exercised on the same principles which govern the Full Court in granting a new trial of an action tried in the Supreme Court before a jury. On appeal to the Full Court from an order of a County Court Judge granting a new trial of an action tried with a jury on the ground that the verdict is against the evidence, the question is whether the evidence was such as would justify reasonable men in coming to the conclusion as which the jury arrived, and it is not whether the decision of the Judge in granting a new trial was such as a reasonable man could come to. *How* v. *London and North Western Railway Co.* ([1892] 1 Q.B. 391), distinguished. TONKIN *v.* JUMBUNNA COAL MINE CO., 27 A.L.T. 99; 11 A.L.R. 454. [*Victoria.*]

—— **Rule nisi—Security.**—Where the rule *nisi* is silent as to security for costs of the appeal, the appellant may give security at any time before hearing. If security has not been given before the case comes on for hearing it is in the discretion of the Court to allow or refuse further time for the security to be perfected. O'BRIEN *v.* HAINS, 4 S.R. 419; 22 W.N. 136. [*New South Wales.*]

—— **Judge's notes—No note of point of law.**—A District Court Judge, on a point raised by himself, nonsuited the plaintiff. On appeal the only note of the point was an endorsement on the back of the original summons made by the Judge, "Plaintiff nonsuited." The Full Court *held*, that there was nothing to show on what grounds the nonsuit was granted and dismissed the appeal. HUTCHINSON *v.* HALE, 22 W.N. 26. [*New South Wales.*]

—— **Special case abandoned.**—A party who has had a special case stated under sec. 107 and signed by the Judge, may, before the special case has been transmitted to the Supreme Court, abandon his proceeding and appeal by way of rule *nisi* under sec. 108. COGHLAN *v.* ALEXANDER, 5 S.R. 441; 22 W.N. 128. [*New South Wales*].

—— **Money paid to party successful below—Refund.**—Where money had been paid out of the District Court to the party successful, the Supreme Court, having reversed the decision, ordered she money to be refunded. COGHLAN *v.* ALEXANDER, 5 S.R. 441; 22 W.N. 128. [*New South Wales.*]

COSTS — Fixing — Review.—County Court Act, 1890 (No. 1078), sec. 47 — County Court Rules, 1901, r. 428—Costs of action—Costs fixed—Review—Alteration. Where a Judge at the hearing, or the Registrar under the direction of the Judge, fixes the costs of an action in the County Court, such costs cannot be reviewed or altered by the Judge. R. *v.* GAUNT; SELLWOOD *v.* LANG, 1905 V.L.R. 302; 26 A.L.T. 241; 11 A.L.R. 197; S.C. 26 A.L.T. Supp. 4. [*Victoria.*]

—— **Scale.**—*See* COLLIS *v.* HODGSON (2), 26 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 29. [*Victoria.*]

—— **Scale—Judgment for nominal damages—Injunction and costs.**—WILSON *v.* ANDERSON, 26 A.L.T. Supp. 5; 11 A.L.R. (C.N.) 35. [*Victoria.*]

—— **Schedule—Various items.**—*Amhurst Tailings and G. M. Co. v. Tompsitt* (5 A.L.R. (C.N.) 23); *Horsfall v. Swan Bank and Brick Works Co.* (17 W.R. 119); *Dowling* v. *Victorian Railways Commissioner* (6 A.L.R. 98), considered. CLARKE *v.* LODDON GOLD DREDGING CO., 11 A.L.R. (C.N.) 63. [*Victoria.*]

—— **Counsel's fees in jury cases.**—WEBB *v.* THOMAS, 26 A.L.T. Supp. 9; 11 A.L.R. (C.N.) 29. [*Victoria.*]

—— **On plea of set-off.**—*Held*, by Mansfield D.C.J., that he had no power to allow to a plaintiff costs on a set-off, though he succeeds thereon. JONES *v.* O'CONNOR, 1905 Q.W.N. 41. [*Queensland.*]

[*Note.*]—A rule to allow these costs was subsequently passed. *See ibid.*

—— **Various items.**—The following items considered:—Summonses for witnesses—Attending filing plaint—Answers to interrogatories—Attending paying jury fees, &c.—Conferences. BETTLES *v.* HUNTER (2), 26 A.L.T. Supp. 6. [*Victoria.*]

—— **Review of taxation.**—Where a summons to review allowance of items is taken out the respondent if he wishes to review the disallowance of other items in the same taxation must take out a cross summons. BETTLES *v.* HUNTER (1) 26 A.L.T. Supp. 6; 11 A.L.R. (C.N.) 34. [*Victoria.*]

—— **Summons for final judgment.**—Where a summons for final judgment is dismissed because the defendant's affidavit shows a good ground of defence costs should be made costs in the cause. HANSEN *v.* MCQUADE 27 A.L.T. Supp. 8; 11 A.L.R. (C.N.) 62. [*Victoria.*]

—— **No jurisdiction—Striking out case.**—*See Striking out case, col.* 88.

—— **Local Government—Rate appeals.**—*See* ELECTRIC SUPPLY CO. OF VICTORIA *v.* MAYOR, &C., OF BENDIGO, 27 A.L.T. Supp. 4; 11 A.L.R. (C.N.) 53. [*Victoria.*]

JUDGMENT SUMMONS—Settlement.—Once a judgment summons has been served, the matter should be allowed to come into Court. A settlement of the matter is improper. WILLIAMS *v.* BEAR, 27 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 37; and *see* MUTUAL FINANCIAL CO. *v.* VAUDEAU, 27 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 45. [*Victoria.*]

FINAL JUDGMENT—Form of summons for.—Rules 1891, Sch. form 9—R. 82.—YENCKEN & CO. PROPRIETARY *v.* WHITELAW & CO., 26 A.L.T. Supp. 8; 11 A.L.R. (C.N.) 41. [*Victoria.*]

Costs on.—*See Costs, supra.*

REMOVAL TO SUPREME COURT—Jurisdiction of District Court depending on Mining Act.—An action was brought in the District Court, which under the District Courts Act, 1858, that Court had no jurisdiction to try, but it had jurisdiction, concurrently with the Warden's Court, under the Mining Act, 1898, to try the action. Under the District Courts Act power is given to the Supreme Court to remove actions commenced in the District Court, but under the Mining Act the jurisdiction of the Warden's Court or the District Court, as the case may be, is exclusive. The matters in respect of which the action was brought were clearly within the jurisdiction of the Warden's Court, and the District Court, but the amount claimed was over £20,000, and it was certain that there would be an appeal, and the case might ultimately be carried to the Privy Council. Under these circumstances it was sought to remove the action into the Supreme Court. *Held*, that the Supreme Court had no jurisdiction to entertain the application. WAIHI GOLD MINING CO., LTD. *v.* WAIHI GRAND JUNCTION GOLD CO., LTD. 7 N.Z. Gaz. L.R. 87. [*New Zealand.*]

REMITTING ISSUES to District Court.—In an action in the District Court the plaintiff was non-suited, the Judge stating that he was unable to arrive at a decision without further evidence. The plaintiff then sued the defendant in the Supreme Court for the same cause of action. An application by the defendant to have the issues remitted for trial to the District Court in which the previous action had been brought was refused. JOALLAH SINGH *v.* MORTON, 22 W.N. 32. [*New South Wales.*]

—— **Mittimus—District Courts Act, 1891, sec. 129.**—The effect of sec. 129 of the District Courts Act, 1891, 55 Vic. No. 33, is that where a defendant demonstrates that the action could have been brought in the District Court without his consent, he is entitled to get an order remitting the action to that Court, unless the plaintiff establishes that the case falls within the exceptions to the section. The burden of proof is on the party opposing the *mittimus*. Where the defendant filed an affidavit showing a defence on the merits to an action and that the case could not be disposed of on an application for a summary judgment under O. XVIII., a *mittimus* was granted. DUNCANSON *v.* PARRY, 1905 Q.W.N. 14. [*Victoria.*]

LIBERTY TO APPLY in detinue and conversion. *See* COLLIS *v.* HODGSON, (1) 26 A.L.T. Supp. 3; 11 A.L.R. (C.N.) 25. [*Victoria.*]

DIVORCE.

Jurisdiction—Offence abroad.—Where an act which, if done within Victoria would be a ground of divorce is done in a country where it is an unlawful act, even though it is not there a ground of divorce it is a ground of divorce in Victoria, provided all other conditions are complied with. A husband and wife married in New Zealand in 1893, were domiciled there until 1900, when they came to Victoria and became domiciled there. The wife was a habitual drunkard and neglected her domestic duties for a period of three years and upwards ending in 1902, during part of which time the parties were domiciled in New Zealand. Habitual drunkenness on the part of a wife wife for five years is, and at all times material was, a matrimonial offence in New Zealand. *Held*, that the Court had jurisdiction to grant a divorce. CREMER *v.* CREMER, 1905 V.L.R. 532; 27 A.L.T. 42; 11 A.L.R. 274. [*Victoria.*]

—— **Domicil.**—The domicil of the parties within the jurisdiction is necessary to give to its Courts jurisdiction. The onus of proving a change of domicil is on the party who alleges it. Where the respondent appears absolutely, and not under protest,

and thereby submits to the jurisdiction, the question of domicil does not arise. The parties were married in 1891 in South Australia, where they were both domiciled. In 1896 the respondent left his wife and went to Western Australia, where he had since resided, and was employed in the Government service there. The wife remained in South Australia. A petition for divorce having been presented by the wife, a written submission by the respondent to the jurisdiction of this Court was filed. *Held*, that the Court had jurisdiction to grant a divorce. COOKE *v.* COOKE, 1904 S.A.L.R. 69. [*South Australia.*]

In order to entitle a person under sec. 74 of the Marriage Act, 1890, to institute proceedings for a divorce, he or she must at the time of instituting such proceedings be domiciled in Victoria and must have been domiciled there for at least the two years immediately preceding such time. KING *v.* KING, 1905 V.L.R. 420; 26 A.L.T. 242; 11 A.L.R. 187. [*Victoria.*]

The domicil of origin continues until it is changed, but an infant cannot change his domicil of origin by his own act. An infant, whose domicil of origin was in Victoria went out of that State and was married in another State. The wife returned to the husband's domicil of origin at his request, he promising to follow her and make a home for her there. He did not return, but deserted his wife. *Held*, that he still retained his domicil of origin. ROBERTSON *v.* ROBERTSON, 1905 V.L.R. 546; 27 A.L.T. 48; 11 A.L.R. 304. [*Victoria.*]

Habitual drunkard.—A man is a habitual drunkard within the meaning of sec. 22 of the Divorce and Matrimonial Causes Act, 1904, if he has been in the habit almost every week of coming home in the evening two or three times in the week, and sometimes oftener, under the influence of drink. It is not necessary that he should have been drunk daily. Nor is he any the less a habitual drunkard because at times he has been sober for a month, or because at one time, during the period in question, he may have left off drink for two or three months, or because during the four years he may have been hardly ever absent from his work. DEMPSEY *v.* DEMPSEY, 24 N.Z.L.R. 829. [*New Zealand.*]

Desertion—Husband without means.—A husband who, upon his discharge from gaol is practically without means, cannot be charged with desertion if he is not at once able to provide his wife with a home; and in such case desertion will only be presumed from the time when in the circumstances it is clear that he has abandoned all intention of endeavouring to provide for his wife. MCCUTCHEON *v.* MCCUTCHEON, 7 N.Z. Gaz. L.R. 628. [*New Zealand.*]

Connivance.—A wife, without just cause, left her husband's house, and refused to return to it, or to allow him to live with her. Having reason to suspect her of adultery with a certain man, the husband, for the purpose of obtaining proof of her guilt, secretly watched the house in which she lived. On one occasion he saw the man whom he suspected enter the house in the evening and leave at an early hour of the following morning, and, on another occasion, saw the pair in the act of adultery. He did not interfere on either occasion. *Held*, in a suit by the husband for dissolution of marriage on the ground of adultery, that these facts did not establish connivance. Decision of the Supreme Court ([1904] 4 S.R. (N.S.W.) 506), reversed. DAVIS *v.* DAVIS AND HUGHES, 2 C.L.R. 178; 11 A.L.R. 29. [*New South Wales.*]

Condonation.—Condonation is a conclusion of fact, not of law, and means the complete forgiveness of a conjugal offence, followed by cohabitation, the whole being done with full knowledge of all the circumstances of, and full belief in the commission of, the particular offence forgiven. Cohabitation subsequent to a suspicion merely of the commission of an offence does not amount to condonation. O'LOUGHLIN *v.* O'LOUGHLIN AND SLADE, 1904 S.A.L.R. 109. [*South Australia.*]

Restitution of conjugal rights—Letter of demand—Service.—The Court made an order for substituted service of the letter of demand in proceedings for restitution of conjugal rights. PLANT *v.* PLANT, 22 W.N. 174. [*New South Wales.*]

Petition—Service.—Where plaintiff went through the form of marriage with the defendant in Brisbane, the defendant being then married to a domiciled Scotchman, and having since gone to Scotland on a visit, from which she did not return, leave was given to serve a petition and writ of summons (in an action for a declaration of nullity of marriage) out of the jurisdiction, service to be effected as though the defendant were domiciled within the jurisdiction, notwithstanding that the writ of summons did not show by its endorsement that the subject-matter of the action came within O. XI., r. 1 (5). Where applicable, the precedure prescribed by O. X., to be followed. MORGAN *v.* MACDONALD (f.c. MORGAN), 1905 Q.W.N. 18. [*Queensland.*]

Personal service.—An order, under r. 10 of the Rules in Divorce, dispensing with personal service on the respondent, will not be made on the uncorroborated affidavit of the petitioner, but an affidavit of some reputable, independent person must be filed, showing particularly what efforts have been made to find the respondent, and the grounds on which it is alleged that personal service ought to be dispensed with. BOYD *v.* BOYD, 7 N.Z. Gaz. L.R. 539. [*New Zealand.*]

—— **Removal from file.**—Where a petition for divorce contained statements which were untrue, and where, if true, it was undesirable to publish them, *held*, that the petition should

be removed from the file. P. *v.* P., 7 N.Z. Gaz. L.R. 113. [*New Zealand.*]

Co-respondent—Dispensing with joinder.—Where the husband has not had access to his wife, and the wife becomes the mother of a child, the Court will allow a suit for divorce to be instituted on the ground of adultery, without joining any person as co-respondent. MACKENZIE *v.* MACKENZIE, 7 N.Z. Gaz. L.R. 3. [*New Zealand.*]

Before trial, by mistake an order was made dispensing with service on unknown persons implicated in adultery. The order intended to be made was to dispense with joining co-respondents. The proper order was made at the hearing, and was ordered to appear on the face of the decree *nisi*. HUNT *v.* HUNT, 11 A.L.R. (C.N.) 21. [*Victoria.*]

Delay—Supplementary affidavit.—Leave given to file supplementary affidavit to explain delay. PONSFORD *v.* PONSFORD, 11 A.L.R. (C.N.) 36. [*Victoria.*]

Evidence—Corroboration.—The evidence of a petitioner in divorce must be corroborated by evidence of some person not a party to the suit. Proof of the handwriting of the respondent in a letter admitting the birth of a child not the child of the petitioner, is sufficient corroboration. SVENSON *v.* SVENSON, 7 N.Z. Gaz. L.R. 356. [*New Zealand.*]

There is no inflexible rule that a decree for divorce cannot be granted on the uncorroborated testimony of the petitioner, but the Court, before it makes its decree, will cautiously, closely, and even suspiciously examine the uncorroborated evidence of the petitioner in all cases, and will decline to act on such uncorroborated testimony where further evidence is easily procurable. READ *v.* READ, 1905 V.L.R. 424; 27 A.L.T. 8; 11 A.L.R. 332. [*Victoria.*]

Quære, whether a decree for dissolution should be granted on the uncorroborated testimony of the petitioner. STACK *v.* STACK, 8 N.Z. Gaz. L.R. 79. [*New Zealand.*]

—— **Affidavit.**—Affidavit evidence is not admissible in New Zealand except by leave of the Court to supplement evidence given on the hearing. SVENSON *v.* SVENSON, 7 N.Z. Gaz. L.R. 356. [*New Zealand.*]

Custody of children.—An application by the mother for custody *pendente lite*, was refused where there were cross charges of adultery and cruelty, and the evidence as to the cause of separation between husband and wife was conflicting. *Cartledge* v. *Cartledge*, (2 S. & T. 567), followed. MOYSE *v.* MOYSE, 22 W.N. 178. [*New South Wales.*]

After decree absolute, by which custody of the children was given to the husband, with access to the wife, the wife filed a petition for increased access. *Held*, that this was a proceeding in the suit, and that service of the petition upon the husband's solicitors on the record in the suit was good. *Held, also*, that there being a petition upon the file, the Court had inherent jurisdiction to make an interim order for increased access pending the hearing of the petition. DAVIES *v.* DAVIES AND HINSON, 22 W.N. 139. [*New South Wales.*]

Costs—Attorney-General.—The Court has jurisdiction to award costs to the Attorney-General where he intervenes either on the ground of collusion or on the ground that material facts have not been brought before the Court. Where the Court has granted a decree *nisi* for dissolution of marriage with costs and the Attorney-General subsequently successfully intervenes, the proctor for the petitioner will not be deprived of the order made for costs where he is not in fault, and was ignorant of the petitioner's misbehaviour. ST. LEGER *v.* ST. LEGER, 27 A.L.T. 124; 11 A.L.R. 506. [*Victoria.*]

—— **Against co-respondent—Petition dismissed.**—Where a petition by a husband on the ground of his wife's adultery is dismissed, the Court has jurisdiction to order that the co-respondent pay the petitioner's costs of the petition. WOLSTENHOLME *v.* WOLSTENHOLME, 27 A.L.T 59; 11 A.L.R. 410. [*Victoria.*]

—— **Respondent woman of independent means.**—Where, in divorce proceedings, the respondent against whom a decree was made, was a woman of independent meant, having separate estate, the Court ordered her to pay her own costs and the husband's costs of the divorce proceedings. *Millward* v. *Millward* (57 L.T. 569), and *Hyde* v. *Hyde* (59 L.T. 523), followed. BAGNALL *v.* BAGNALL, 7 N.Z. Gaz. L.R. 454. [*New Zealand.*]

—— **Of wife—Application after trial.**—A husband petitioned for divorce on the ground of adultery. The wife filed an answer denying the adultery. At the hearing counsel for the wife appeared, but did not call evidence, and the Court found that the adultery had been proved, and granted a decree *nisi*. Application was then made for the wife's costs. *Held*, that as the application was made after the trial, it could not be granted. MCKINLAY *v.* MCKINLAY, 7 N.Z. Gaz. L.R. 582. [*New Zealand.*]

Non-payment of costs — Attachment. — Where the husband had not complied with an order for payment of costs to the wife's solicitor, *held*, that the solicitor was entitled to apply for an order of attachment against the husband. *Lundberg* v. *Lundberg* (22 W.N. 98), distinguished. PARRY *v.* PARRY, 22 W.N. 177. [*New South Wales.*]

The husband was ordered to pay into Court a sum of money towards the wife's costs of the suit. The parties resumed cohabitation and the order was not complied with. The wife's costs not having been paid, *held*, that her solicitor had no *locus standi* to apply for an attachment against the husband for non-compliance with the order. *Byrne* v. *Byrne*

(10 W.N. 143), and *Erskine* v. *Erskine* (21 L.R. D. 1), distinguished. LUNDBERG *v.* LUNDBERG, 22 W.N. 98. [*New South Wales.*]

DOG.

See ANIMAL—POLICE OFFENCES.

DOMICIL.

See DIVORCE.

DONATIO MORTIS CAUSA.

See WILL.

EARLY CLOSING.

Shop—Auctioneer—Sale by retail.—An auctioneer conducting a sale in a private house does not occupy the house as principal so as to constitute him a shopkeeper of the house, nor is such house a shop within the meaning of the Early Closing Act. To bring a shopkeeper within the Act he must be shown to occupy the shop as principal. Meaning of "shop" and "shopkeeper" considered. *Quære*, whether an auctioneer is a shopkeeper. *Ex parte* MACKAY, 22 W.N. 53. [*New South Wales*].

An auction sale is not a sale by retail within the meaning of the Factories and Shops Act, 1900. YOUNG *v.* HALL, 1905 S.R. (Q.) 151; Q.W.N. 57. [*Queensland.*]

The allegation in the complaint that a shop is a "shop" within the meaning of the Factories and Shops Act, 1900, is not sufficient proof of the fact. YOUNG *v.* HALL, 1905 S.R. (Q.) 151; Q.W.N. 57. [*Queensland.*]

A pawnbroker sold goods by auction conducted by a licensed auctioneer. There being no evidence that the pawnbroker's shop was a shop within the meaning of the Factories and Shops Act of 1900 (64 Vic. No. 28), *held*, that an information charging him with failing to close his shop at the hour prescribed was rightly dismissed. YOUNG *v.* HALL, 1905 S.R. (Q.) 151; Q.W.N. 57. [*Queensland.*]

Combined district.—Sub-sec. 3 of sec. 8 of the Shops and Offices Act, 1904, is evidentiary only, and a Gazette notice under that section is not a condition precedent to the existence of a combined district. The expression "the combined districts of Auckland, Wellington, Christchurch and Dunedin," used in sec. 3 of the Shops and Offices Act, 1904, is not ambiguous. It means the combined districts as defined by sub-sec. 2 of sec. 8, of which those cities respectively form part. SHANAGHAN *v.* TANNER, 7 N.Z. Gaz. L.R. 505. [*New Zealand.*]

Regulation for closing.—There is no authority under the Factories and Shops Acts for a municipality to make a by-law, or for the Governor-in-Council to make a regulation, requiring all shops of a class mentioned in the Fourth Schedule to the Factories and Shops Act, 1890, to be closed from 1 o'clock p.m. of a particular day in each week. So *held* by Madden C.J. and Holroyd J.; Hood J. dissenting. *In re* HOOKER, 1905 V.L.R. 680; 27 A.L.T. 93; 11 A.L.R. 387. [*Victoria.*]

EASEMENT.

Right of way—Necessity—Crown grant.—The principle that a grant of land implies a grant of a way of necessity to the land applies in the case of a Crown grant. Where there is an implied grant of a way of necessity to land, and other land is afterwards acquired by the grantee which gives him other access to the first-mentioned land, the way of necessity ceases, though the new way may not be as convenient as the previous one. CHRISTIE *v.* LEE SMITH; SMITH *v.* CHRISTIE, 24 N.Z.L.R. 561; 7 Gaz. L.R. 369. [*New Zealand.*]

—— **Prescription.**—Where there had been twenty years enjoyment of a way as of right prior to the 1st of January, 1886 (the date of the coming into operation of the Land Transfer Act, 1885), and such enjoyment had continued thenceforward to the date of the action, *held*, that a prescriptive right to the easement had been established, and that the owners of the dominant tenement were entitled to have a memorial of the easement entered upon the certificate of title to the servient tenement. *The New Zealand Loan and Mercantile Agency Co.* v. *The Corporation of Wellington* (9 N.Z.L.R. 10), followed. CHRISTIE *v.* LEE SMITH; SMITH *v.* CHRISTIE, 24 N.Z.L.R. 561; 7 Gaz. L.R. 369. [*New Zealand.*]

—— **Acknowledgement.**—The appellant's predecessors in title had written to the respondents in 1885 stating that they understood that if they acknowledged the respondents' right to use the way the respondents would pay half the cost of certain fencing which they were not legally liable to pay, and stating further, that if the respondents agreed to this they would offer no further objection to the respondents continuing the use of the way. The respondents agreed, and paid the half cost of the fencing, and continued using the way for a number of years. *Held*, that this was an acknowledgment for valuable consideration of the existence of the right of way claimed by the respondents; that if the appellant's predecessors in title had afterwards proceeded to stop up the way or obstruct the use of it by the respondents they

could have been restrained by injunction, and that the appellant was in no better position. CHRISTIE *v.* LEE SMITH; SMITH *v.* CHRISTIE AND ANOTHER, 24 N.Z.L.R. 561; 7 Gaz. L.R. 369. [*New Zealand*].

Support.—*See* SUPPORT.

Water.—*See* WATER.

EDUCATION.

Separate schools—Re-instatement of teacher.—The respondent was, at the date of the coming into operation of the Public School Teachers' Salaries Act, 1901, the headmaster of a school under the control of the appellant Board, consisting of a boys' school, in one building, for boys in the Second Standard and upwards; a side school in the same grounds, called an "infants' school," for children of both sexes up to the First Standard (inclusive); and a similar school, called a "side school," at a distance of a mile and a half, which was also a school for children of both sexes up to the First Standard (inclusive). There was also, at the same date, in the same building as the boys' school, a separate school for girls, under a head-mistress. At the date of the coming into operation of the Act, the average daily attendance at each of the said schools was as follows: At the boys' school and school called the infants' school, together, 263; at the school called the side school, 23; and at the girls' school, 155. *Held*, by the Court of Appeal (Williams and Denniston JJ.; Edwards J. dissenting)—(1) That there was nothing in the Act of 1901, or in the Schedules thereto, which mads it obligatory upon the appellant Board to abolish the girls' school, or to amalgamate it with the school over which the respondent presided. (2) That, if the appellant Board did amalgamate the girls' school with the school of which the respondent was master, that did not destroy that school, or so alter its nature as to make the respondent's office *ipso facto* vacant, nor destroy his office, so as to make it impossible for a Teachers' Court of Appeal to order him to be reinstated in it (his engagement having been terminated by the appellant Board by notice). (3) That, a Teachers' Court of Appeal having so ordered, the respondent was entitled to be reinstated in the position of headmaster of the school with which the girls' school had been amalgamated, at the salary fixed by Part I. of the first Schedule of the Act of 1901, with reference to the total attendance of boys, girls, and infants. Cooper J. had also *held*, in the Supreme Court that the position which the respondent held still existed, the nature of the school not having been changed, although the attendances might have been largely increased by the inclusion within the school of the girls, as additional pupils. Stout C.J. had *held*, that the question was whether a new appointment required in consequence of the change was one for the Teachers' Court of Appeal under the statute, and for it alone. The written judgment delivered by one of the members of a Teachers' Court of Appeal concluded with a statement that in his opinion the respondent then appellant, was entitled to be reinstated. The written judgment of the Chairman of the Court was to the effect that he concurred in the judgment of the member just referred to and that the appeal would, therefore, be allowed. This judgment was signed by the Chairman and forwarded to the Minister, with copies of the decision of the member referred to, and of that of the third member of the Court. *Held*, that the requirements of the Public School Teachers Incorporation and Court of Appeal Act, 1895, had been substantially complied with, and that the decision of the Court was equivalent to an order that the respondent, then appellant, was entitled to be reinstated. THE MARLBOROUGH EDUCATION BOARD *v.* STURROCK, 24 N.Z.L.R. 65 [*New Zealand.*]

Separate schools.—There is nothing in the Public School Teachers' Salaries Act, 1901, or in the Schedules thereto, which has the effect of prohibiting an Education Board from continuing a separate school for boys, girls, or infants which may have been in existence at the date of the coming into operation of the Act of 1901, although its numbers may have been below 201, or (*per* Williams J., in the Court of Appeal, and *per* Stout C.J., in the Supreme Court) from establishing such a school after the coming into operation of that Act. THE MARLBOROUGH EDUCATION BOARD *v.* STURROCK, 24 N.Z.L.R. 65. [*New Zealand.*]

Teachers' Court of Appeal—Review of decision.—Neither the Supreme Court nor the Court of Appeal has any jurisdiction to review the decision of a Teachers' Court of Appeal, constituted under the Public School Teachers' Incorporation and Court of Appeal Act, 1895, and the Act of 1897 amending that Act, so long as it has acted within the powers given to it by those Acts. THE MARLBOROUGH EDUCATION BOARD *v.* STURROCK, 24 N.Z. L.R. 65. [*New Zealand.*]

EJECTMENT.

Evidence of possession.—Appearance *held* evidence of possession by defendant. ALLARD *v.* ZIMPEL, 7 W.A.L.R. 17. [*Western Australia.*]

Originating summons—Order LV., r.5—of rr. of Supreme Court, 1900.—*See* PRACTICE. MCCRINDLE *v.* AUSTRALIAN PRODUCERS' AND TRADERS' CO., 1905 V.L.R. 575; 27 A.L.T. 81: 11 A.L.R. 385. [*Victoria.*]

EJUSDEM GENERIS.

See CONTRACT—STATUTE—MELBOURNE HARBOUR TRUST.

ELECTION.

To sue executor personally or representatively.—*See* EXECUTOR AND ADMINISTRATOR. FAULDING & CO. *v.* FOTHERINGHAM, 1904 S.A.L.R. 1. [*South Australia.*]

Between defendants both liable.—*See* EXECUTOR AND ADMINISTRATOR. FAULDING *v.* FOTHERINGHAM, 1904 S.A.L.R. 1. [*South Australia.*]

And *see* WILL.

ELECTRIC LIGHT ACT.

Uniform rate—Preference.—A corporation which supplied electricity under that Act charged for electricity under two alternative rates, either of which might be chosen by consumers, and the result was that a person taking electricity at the one rate might pay more per unit than a person taking electricity at the other rate, and one of those rates was of such a nature that some consumers might have to pay more per unit than other persons. *Held*, that in respect of the two rates, and also in respect of the last-mentioned rate, a prefe-ence was shown to some persons, and that the charge for electric supply was not uniform within the meaning of sec. 39 of the Electric Light and Power Act, 1896. *The Attorney-General* v. *The Mayor, &c., of Melbourne* (23 A.L.T. 123; 27 V.L.R. 568), followed. ATTORNEY-GENERAL *v.* MAYOR, &C. OF THE CITY OF MELBOURNE, 27 A.L.T. 116; 11 A.L.R. 504. [*Victoria.*]

Injunction to restrain breach.—*See* STATUTE.

ELECTRIC LINES.

See CRIMINAL LAW. R. *v.* LAWRENCE, 7 N.Z. Gaz. L.R. 559. [*New Zealand.*]

EMPLOYERS' LIABILITY.

See MASTER AND SERVANT.

ESTATE.

Tenant in common—Improvements.—The equitable right of a tenant in common of real estate, who has made permanent improvements upon it while in sole occupation, to be compensated for his expenditure to the extent to which the value of the land has been increased thereby, is one which attaches to the land and passes with it to a purchaser, but is enforceable only as a defensive equity, in the event of a partition, or a distribution, amongst the tenants in common, by the Court of Equity, of the proceeds of sale of the land. The fact that the tenant in common has already received without objection a portion of the fund does not necessarily prevent the application of this principle. The appellant was for several years in exclusive possession and enjoyment of the rents and profits of certain land, of which he believed himself to have purchased the fee simple, whereas in fact he had acquired only an estate *pur autre vie* of the entirety, with an equitable tenancy in common with certain of the respondents in remainder, his share being one-fourth. Permanent improvements had been erected upon the land by one of the appellant's predecessors in title. After the death of the *cestui qui vie* the land was resumed by the Minister for Public Works, under the Public Works Act (N.S.W.) 1900. The Minister paid the appellant one-fourth of the compensation moneys, and, at the request of the appellant, paid the balance into Court. The appellant accepted the amount paid to him, without prejudice to any claim he might have in respect to the balance. *Held*, that, on a petition by the other tenants in common for payment out, under sec. 48 of the Public Works Act (N.S.W.) 1900, the appellant was in the position of a defendant, and was entitled to assert an equitable lien upon the fund in Court to an amount equal to three-fourths of the increase in the value of the land attributable to the improvements, but that, before being allowed the benefit of this equity, he should be required to account for the rents and profits which he had received while in exclusive possession after the death of the *cestui qui vie*, in order that the amount to which the other tenants were entitled in respect of them might be set off against the amount due to him in respect of the improvements. Decision of A. H. Simpson C.J. in Equity (4 S.R. (N.S.W.) 743; 21 W.N. 257), on this point reversed. *In re* YOUNG; BRICKWOOD *v.* YOUNG, 2 C.L.R. 387; 11 A.L.R. 154; *In re* YOUNG, 4 S.R. (N.S.W.) 743; 21 W.N. 257. [*New South Wales.*]

Tenant for life—Forfeiture—Devise to such children of tenant for life as from and after his decease should have attained or should attain the age of twenty-one—Contingent remainder—Executory devise—Release of possibility—Merger.—A. devised a freehold estate to J. for life, and from and after J.'s decease to J.'s children, who, being sons, should have attained or should attain the age of twenty-one years, or who, being daughters, should have attained or should attain that age, or should have married or should marry, and in default of such issue over, and directed that it should not be lawful for J. to charge or dispose of any estate or interest in the premises, and that

in the event of him attempting to do so or of the interest of the tenant for life being attached, alienated or disposed of by operation of law, his interest should be given to the persons entitled thereto if such tenant for life were actually dead. J.'s life estate became forfeited; at the time of such forfeiture there was one child of J., who was an infant, but who now was of age. *Held*, that the meaning of the devise was that on the forfeiture of the life interest the fee simple should immediately go as on the death of the tenant for life. *Key* v. *Key* (4 D.M. & G. 84); *Towns* v. *Wentworth* (11 Moo. P.C. 543); and *Burt* v. *Wall* (11 N.S.W.L.R. Eq. 153) applied. *Held, further*, that the limitation was to all the children of J., who at J.'s death should fulfil the condition of majority or marriage, and was, therefore, an executory interest and not a contingent remainder. *Re Lechmere and Lloyd* (18 Ch. D. 524); *Myles* v. *Jarvis* (24 C.D. 633); *Dean* v. *Dean* ([1891] 3 Ch. 150) followed. *Held, also*, that J.'s child on attaining twenty-one became entitled to an estate in fee simple, but that her interest was liable to open to let in any future children J. might have, who should fulfil the condition of majority or marriage. J. executed a post-nuptial settlement in favor of M. as trustee for certain beneficiaries. J. was entitled to certain property expectant on M. predeceasing him without issue; *held*, that the settlement did not in law or in equity operate as an assignment of the possibility, neither did the fact of M. being both trustee and terre tenant render it possible for the settlement to operate as an assignment of the possibility, and at the same time keep it alive for the benefit of the *cestuis que trustent*. A release of a possibility to the terre tenant is only permitted with a view to its extinction: *Lampet's Case* (10 Co. Rep. 48). *In the will of* CARAHER, 5 S.R. 63; 21 W.N. 213. *But see* CARAHER *v.* LLOYD, 2 C.L.R. 480; 11 A.L.R. 400. [*New South Wales.*]

Contingent remainder—Extinguishment—Release.—A contingent remainder may be released by deed to the tenant for life, and such a release will operate by way of enlargement of the latter's estate, and not merely by way of extinguishment of the contingent remainder. An instrument, which is capable of operating as a release of such an interest, made in favour of a person capable of accepting it, will pass the legal estate to the releasee although by the terms of the instrument the releasee agrees to accept it, not for his own benefit, but as trustee for others. *Quære*, whether, independently of statutory enactments, the doctrine that executory and contingent interests are not assignable to a stranger except by fine or by a contract for valuable consideration is good law, and whether such interests do not pass by an instrument capable of creating estoppel, *e.g.*, an indenture. A testator devised certain lands to his wife for life, and, after her death, to his two sons M. and J. for their lives as tenants in common in equal shares, the share of either son dying to go to that son's children, who being sons should attain the age of twenty-one years, or being daughters should attain that age or marry, and in default of such issue, to the other children of the testator then living. Certain other lands were devised to J. for life, with limitations in remainder after his death as in the former devise. The residue was devised to M., J. and another upon trust to sell, and to hold the proceeds after payment of certain legacies and expenses, in trust for M. and J. in equal shares. There was a proviso that (*inter alia*) if any of the children made tenants for life should alienate or attempt to alienate their interest or interests in the lands so devised the interest of such tenant for life should go as on his or her death. Before the widow's death, J. by voluntary post-nuptial settlement, purported to "grant bargain sell alien and release" to M., as trustee in fee, all "the lands and property of whatsoever nature and kind soever absolutely and otherwise acquired" by him under the will and all his "estate right title and interest" therein to hold to such uses as his wife E., one of the appellants, should appoint, and in default of appointment for her separate use for life with remainders over. After the death of the widow of the testator, and of M., who died without issue, E. exercised her power of appointment in favour of the other appellant. J. having become bankrupt six years after the settlement, all his interests not then legally disposed of passed to the respondent, as Official Assignee, but the validity of the settlement itself was not affected. It was not disputed on the appeal, that the settlement operated to create a forfeiture of J.'s life estate under the will or that under the forfeiture the intermediate rents and profits, until one of J.'s children attained the age of twenty-one years, fell into residue. *Held*, that, as to M.'s moiety of the lands devised to the testator's wife, J., at the date of the settlement had a contingent remainder in fee as tenant in common with such of the testator's children as should survive M., and a vested remainder as residuary devisee in joint tenancy in the event of failure of any of the testator's children to survive M. That J.'s interest in M.'s moiety was effectually released by the settlement to M., either regarded as tenant for life in remainder expectant on his mother's decease, or as joint tenant in remainder under the residuary devise; and that the accretion or enlargement of his original estate which M. thus acquired was bound in his hands by the trusts of the settlement. *Doe d. Calkin* v. *Tomkinson* (2 M. & S. 165); and *In re Ellenborough*; *Towry Law* v. *Burne* ([1903] 1 Ch. 697), distinguished. *Held, further*, that J.'s interest as residuary devisee quoad the property comprised in the second devise, though it depended upon certain contingencies whether he would ever take anything under it, was not a contingent, but a vested interest, and passed under the settlement. *Egerton* v. *Massey* (3 C.B.N.S. 338), followed.

Decision of Walker J. ([1905] 5 S.R. (N.S.W.) 63; 21 W.N. 213) reversed on these points. CARAHER *v.* LLOYD, 2 C.L.R. 480; 11 A.L.R. 400; 5 S.R. 63; 21 W.N. 213. [*New South Wales.*]

Tenant for life—Proceedings by—Costs.—Where proceedings in respect of a trust estate are instituted or carried on by a tenant for life and result in benefit to the trust estate, although not in their origin directed to such benefit, the Court has jurisdiction to order the costs of the tenant for life of such proceedings to be charged upon the estate and to order an immediate sale of a portion of the estate to defray such costs. *Hamilton* v. *Tighe* ([1898] 1 I.R. 123); and *In re Pender* 15 V.L.R. 474), followed. *In the will of* BLAKE; O'NEIL v. HART, 1905 V.L.R. 306; 27 A.L.T. 12; 11 A.L.R. 258. [*Victoria.*]

Tenant at will.—Under sec. 23 of the Real Property Act, 1890, a tenancy at will being deemed to have ceased at the end of the first year of the tenancy, therefore, when a tenant at will has been in possession of land for sixteen years he becomes entitled to the land. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

Devise of Crown lands to tenants for life—Obligation to keep charge of rents alive.—*See* EXECUTOR AND ADMINISTRATOR. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

Vested interest—Executory limitation.—*See* WILL. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

Under will.—*See* WILL.

Power of appointment.—*See* POWER OF APPOINTMENT.

And *see* SETTLED ESTATE.

ESTOPPEL.

Judgment of Inferior Court—Jurisdiction not disputed below.—In an action in the local Court the plaintiff had obtained an order for possession of premises under the Small Debts Act. The time for issuing execution on the local Court judgment having been allowed to expire, he brought an action of ejectment in the Supreme Court. At the trial he proved the judgment of the local Court. Thereupon the defendant tendered evidence that the case was not within the jurisdiction of the local Court, but this evidence was rejected. *Held*, that inasmuch as the defendant had not disputed the jurisdiction in the Court below he could not dispute it in the Supreme Court, and that, therefore, the evidence was rightly disallowed. ALLARD *v.* ZIMPEL, 7 W.A.L.R. 17. [*Western Australia.*]

Res judicata.—*See* LANDLORD AND TENANT. CLISDELL *v.* GIBNEY, 4 S.R. 670; 21 W.N. 237. [*New South Wales.*] And *see* JUSTICES.

Deed—Recital.—Two sons of a testator, who were also two of the trustees of his will, purchased from the respondents, the trustees of the will, certain lands and the live stock thereon, forming part of the trust property, in intended pursuance of a power given to them by the will so to purchase notwithstanding that they were trustees. They resold to the appellants. A question having been raised as to the validity of the purchase by the two sons, the respondents, the trustees of the will, agreed to adopt and carry out the sale by them to the appellants as a sale under the trust for sale contained in the will. The respondents, the trustees, accordingly executed a conveyance of the lands to the appellants. This deed recited that the testator's sons did on a date named contract and agree with the appellants for the sale to them of the lands "with the flock of sheep depasturing on the said . . . . lands with certain horses cattle chattels and effects thereon" for a price or sum named, and that the respondents, the trustees, had agreed to confirm and adopt as their own the said sale" to the appellants. Certain receipts for deposits which had previously been given by the testator's sons to the appellants, and which formed a sufficient memorandum of the contract entered into by the testator's sons, had specified the number of sheep being sold and included in the purchase money as 9900. After completion between the respondents and the appellants, it appeared that the number of sheep on the lands was short of the above number, and the appellants sued the respondents for a refund on this account. *Held*, by the Court of Appeal (reversing the decision of Stout C.J.), that the recital in the deed of conveyance of the lands could not be treated as the exclusive evidence of the contract adopted by the respondents, or as estopping the appellants from setting up the actual terms of the contract as appearing from the receipts given, although these were unknown to the respondents; that the respondents were bound by the actual terms of the contract by the sons; and that the appellants were entitled to recover from the respondents. STEVENSON AND ANOTHER *v.* SMITH AND OTHERS, 24 N.Z.L.R. 511; 7 Gaz. L.R. 472. [*New Zealand.*]

Against company by issue of certificate.—*See* COMPANY. DAILY TELEGRAPH NEWSPAPER CO. *v.* COHEN, 5 S.R. 520; 22 W.N. 172. [*New South Wales.*]

Bill of sale holder allowing grantor to sell goods.—A bill of sale holder who allows the grantor to continue his business, does not thereby permit the grantor to dispose of the goods comprised in the bill of sale so as to estop the holder from denying that the goods belong to the grantor, unless such disposal be *bona fide* and in the ordinary course of

the business. NATIONAL MORTGAGE AND AGENCY CO. OF NEW ZEALAND *v.* MORGAN, 26 A.L.T. Supp. 4; 11 A.L.R. (C.N.) 29. [*Victoria.*]

Representation of intention.—*See* HUSBAND AND WIFE. MCNAGHTEN *v.* PATERSON, 2 C.L.R. 615; 11 A.L.R. 263; 5 S.R. 90; 22 W.N. 25. [*New South Wales.*]

Against lessor from enforcing forfeiture clause through lying by with knowledge that lessee intends to mortgage. *See* LANDLORD AND TENANT. CAIRNS *v.* BURGESS, 2 C.L.R. 298; 11 A.L.R. 244. [*Tasmania.*]

EVIDENCE.

ONUS OF PROOF—Generally.—The *onus probandi* lies on the person who wishes to support his case by a particular fact, which lies particularly within his own knowledge, or of which he is supposed to be cognisant. In considering the weight of evidence against an accused person, the neglect to discharge such onus by proving or disproving the particular fact alleged to be within his peculiar knowledge, will, as a rule, throw the weight of evidence against him. BURKE *v.* OFFICIAL ASSIGNEE, 7 N.Z. Gaz. L.R. 488. [*New Zealand.*]

—— **Bankruptcy—Fraud.**—*See* BANKRUPTCY. *In re* JACK; JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

—— **Excise Act, 1901, sec. 144.**—*See* CUSTOMS. WALKER *v.* CHAPMAN, 1904 S.R. (Q.) 330; Q.W.N. 83. [*Queensland.*]

—— **False pretences.**—*See* CRIMINAL LAW. R. *v.* KINGSTON, 24 N.Z.L.R. 431; 7 Gaz. L.R. 395. [*New Zealand.*]

—— **Insurance.**—Onus of proof of falsity of declaration in action on policy. *See* INSURANCE. KIDMAN *v.* NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA, 7 W.A. L.R. 64; NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA *v.* KIDMAN, 11 A.L.R. 461. [*Western Australia.*]

—— **Statutory exception.**—That a particular substance falls within statutory exception. *See* MELBOURNE HARBOUR TRUST.

—— **Maintenance cases.**—*See* DESERTED WIVES AND CHILDREN. SINCLAIR *v.* SINCLAIR (2), 26 A.L.T. Supp. 8; 11 A.L.R. (C.N.) 37. [*Victoria.*]

—— **Married woman—Separate estate.**—*See* BANKRUPTCY. *In re* JACK; JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

—— **Sale of liquor—Licensing Act, 1890, sec. 165.**—*See* LICENSING. GRAVES *v.* PANAM, 1905 V.L.R. 297; 26 A.L.T. 232; 11 A.L.R. 180. [*Victoria.*]

—— **Shop—Factories and Shops Act.**—*See* EARLY CLOSING. YOUNG *v.* HALL, 1905 S.R. (Q) 151; Q.W.N. 57. [*Queensland.*]

ADMISSION by silence.—By not replying to a letter from his wife wherein she accuses him of ill treatment, a husband does not admit the statements therein contained. CLAXTON *v.* CLAXTON, 1905 S.R. (Q.) 87; Q.W.N. 37. [*Queensland.*]

And *see* CRIMINAL LAW.

PRESUMPTION—Death.—A man who had been resident in Wellington left for the "King-country" in 1880, and had not been heard of since by his wife and children, who had continued to reside in Wellington, and were still resident there at the date of the proceedings in 1903. *Held*, that he must be presumed to be dead. *In re* BUCK, 24 N.Z. L.R. 148. [*New Zealand.*]

—— **Knowledge of law.**—The question how far and for what purposes knowledge of the law will be presumed discussed by Chapman J. R. *v.* PRICE, 24 N.Z.L.R. 291; 7 Gaz. L.R. 40. [*New Zealand.*]

—— **Foreign law.**—There is a presumption that foreign law is the same as our law until the contrary is shown. BOWDEN BROS. & CO. *v.* IMPERIAL MARINE & TRANSPORT INSURANCE CO., 22 W.N. 195. [*New South Wales.*]

PUBLIC AND JUDICIAL DOCUMENTS—Foreign company—Certificate of registration.—A copy of the certificate of registration of a foreign company purporting to be sealed with the seal of a foreign Court, and certified by a Judge to be a true copy of the original register, *held* admissible as a judicial proceeding under 1898 No. 11, secs. 15 and 21, without proof of the seal of the foreign Court. BOWDEN BROS. & CO. *v.* IMPERIAL MARINE & TRANSPORT CO., 22 W.N. 195. [*New South Wales.*]

—— **Income Tax returns.**—*See* TAXATION.

McLeod *v.* Phillips, 5 S.R. 503; 22 W.N. 163. [*New South Wales.*]

—— **Proceedings before justices—Certificate.**—On an application for a prohibition the certificate of the proceedings before the justices described the chamber magistrate as the officer having the custody of the records, etc., and omitted to state that he was the officer *ordinarily* having the custody, &c. *Held*, that the certificate was informal, and that in the absence of the original depositions or a certificate in proper form, the rule must be discharged. *Ex parte* Brown, 22 W.N. 148. [*New South Wales.*]

On an application to make absolute a rule *nisi* for a prohibition the Full Court upheld an objection that the certificate of the proceedings before the justices was informal, in that it did not state the place where the proceedings were held, and discharged the rule. *Ex parte* Eslick, 5 S.R. 470; 22 W.N. 148. [*New South Wales.*]

Evidence of the proceedings before justices cannot be given by the production of a certificate under sec. 23 of the Evidence Act, 1898, unless the time and place of the proceedings and the title of the Court or name of the justice appear in the certificate. *Ex parte* Carroll, 22 W.N. 55. [*New South Wales.*]

Upon an application for a mandamus objection was taken by the respondent that the certificate produced to prove the proceedings before the justices was informal. *Held*, that the respondent had not waived his right to take the objection by obtaining an adjournment of the application, this not being a preliminary objection. *Ex parte* Carroll, 22 W.N. 55. [*New South Wales.*]

—— **Conviction.**—The production of the Court record containing a minute of the charge and conviction signed by the justice for being an idle and disorderly person, is sufficient evidence of such conviction without having it drawn up formally. R. *v.* Egan, 7 N.Z. Gaz. L.R. 78. [*New Zealand.*]

—— **Record of acquittal.**—The record of acquittal in a criminal case is inadmissible as evidence of the same fact in controversy in a subsequent civil suit. O'Brien *v.* Commissioner of Railways, 7 W.A.L.R. 119. [*Western Australia.*]

—— **Pleadings.**—A pleading delivered by a person in one action is not in another action, by or against that person, admissible as evidence against him of the statements therein contained, even when he sues or is sued in the same capacity in both actions. Austin *v.* Austin, 1905 V.L.R. 564; 27 A.L.T. 17, 43; 11 A.L.R. 337. [*Victoria.*]

—— **Certificate of analyst—Adulteration of milk.**—*See* Public Health. *Ex parte* Rigby, 5 S.R. 317; 22 W.N. 60. [*New South Wales.*]

OTHER DOCUMENTS — Telegram. — *See* Criminal Law. R. *v.* Lawrence, 7 N.Z. Gaz. L.R. 559. [*New Zealand.*]

—— **Letter to explain possession of deeds.**—A letter from the headman of a village in Syria, written to accompany deeds of sale, *held*, admissible in evidence to show how such deeds came into the possession of a person in New Zealand, though not admissible to rebut the suggestion that such deeds had been forged in New Zealand. Burke *v.* Official Assignee, 7 N.Z. Gaz. L.R. 488. [*New Zealand.*]

—— **Plan—Copy.**—*See* Dibbin *v.* Lawler, 11 A.L.R. (C.N.) 31. [*Victoria.*]

—— **Letters written prior to lease sued upon.**—In an action at common law to recover a balance of rent due under a covenant in an indenture of lease, the defendants pleaded, as a plea on equitable grounds, that prior to the execution of the lease it was agreed that the plaintiff should allow the defendants certain deductions from the rent for the first six months of the term; that the defendants executed the lease upon the faith of that agreement; that the plaintiff in accordance with the agreement allowed the defendants the deductions agreed upon; that the defendants paid the plaintiff the remainder of the rent due under the covenant, and the plaintiff accepted it in satisfaction and discharge of the whole of the rent due under the covenant; and that the plaintiff was suing for the rent agreed to be allowed off to the defendants, in fraud of the agreement. At the trial, letters which passed between the parties prior to the execution of the lease were tendered in support of this plea and rejected. *Held*, that, whether the alleged agreement was or was not collateral to the lease, the plea was in effect an allegation of the allowance of cross demands between the parties upon an account stated, and payment of the balance, and afforded substantially a good defence at common law, and that the letters were admissible in evidence in support of it. *Callander* v. *Howard* (10 C.B. 290), followed. Harris *v.* Sydney Glass and Tile Co., 2 C.L.R. 227; 11 A.L.R. 49; 4 S.R. 454. [*New South Wales.*]

PAROL EVIDENCE—To explain documents.—To construe agreement which is unambiguous, *held*, inadmissible. *See* Contract. Rankin *v.* Scott, Fell & Co., 2 C.L.R. 164; 11 A.L.R. 25. [*New South Wales.*]

To explain contract partly oral and partly written. *See* Contract. Deane *v* City Bank of Sydney, 2 C.L.R. 198; 11 A.L.R. 1. [*New South Wales.*]

Evidence to explain meaning of "securities" at date of deed admitted. *In re* Mort; Perpetual Trustee Co. *v.* Mort, 4 S.R. 760: 21 W.N. 259. [*New South Wales.*]

To identify subject matter of contract. *See* Welch *v.* Crawford, 8 N.Z. Gaz. L.R. 53. [*New Zealand.*]

SECONDARY EVIDENCE—Lottery ticket.—On a prosecution under sec. 37 of the Police Offences Act, 1890, for disposing of a ticket in a lottery in which prizes were to be gained if a certain number of characters on the ticket struck out by the purchaser corresponded with a like number of those struck out on an identically similar ticket in the possession of the defendant, the latter ticket is a document within the meaning of the rule which prevents secondary evidence of the contents of a document being given without accounting for the absence of the document. On the facts, *held*, by Hodges and Hood, JJ. (a'Beckett J. dissenting), that there was no evidence of the disposal of a ticket by the defendant, nor that the ticket gave to the purchaser an interest in a scheme by which prizes of money were to be competed for by a certain mode of chance. O'Donnell *v.* Ing Ah Wing, 27 A.L.T. 113; 11 A.L.R. 480. [*Victoria.*]

PRIVILEGE—Medical man—Communication by patient.—The tendering by a patient of his person to a physician for examination is a communication to the physician within sec. 9 of the Evidence Further Amendment Act, 1895, and evidence of the result must be rejected, though no objection is taken at the time. Stack *v.* Stack, 8 N.Z. Gaz. L.R. 79. [*New Zealand.*]

REFRESHING MEMORY.—Where a witness is asked to look at a book in order to refresh his memory, and after doing so says that the entries do not refresh his memory, but that if they were analysed and calculations made the particulars asked for might be obtained, that would be making the entries evidence and not refreshing the memory of the witness. The counsel calling a witness has no right to inspect entries in a book which are inadmissible as evidence unless the witness says they do refresh his memory. Where entries are copied by a witness into a ledger from a rough day-book which was posted by him from small books kept by another person, and such small books have been destroyed, and it does not appear that when the facts recorded occurred or were entered in the small books the witness was aware of them, nor does it appear how long after they occurred they were entered in the small books, or how long after such entry they were posted in the rough day-book, and the witness in no way supervised the entries in the small books, the witness can have no remembrance of their occurrence, and cannot look at any of the documents to refresh a memory which never existed. R. *v.* Borrett, 24 N.Z.L.R. 584; 7 Gaz. L.R. 410. [*New Zealand.*]

ORDER FOR PRODUCTION.—An order for production under sec. 1 of the Imperial Act, 22 Vict. cap. 20, is equivalent to a subpœna *duces tecum* under which the person summoned although not a party to the action, is bound to attend as a witness and bring the papers called for in obedience to the writ, but the Judge alone has a right to inspect them in order to decide whether they are to be submitted to examination; but Commissioners who have been appointed under the said Act to take evidence on commission have no jurisdiction to decide whether a witness who brings a document in obedience to an order, and who objects to submit it to examination, is to be compelled to submit to it. Where the Court is moved, under sec. 1 of 22 Vict. cap. 20, to punish a person for disobedience of an order it must be satisfied that the entries in the document are relevant to the inquiry, and ought to have been disclosed. R. *v.* Borrett, 24 N.Z.L.R. 584; 7 Gaz. L.R. 410. [*New Zealand.*]

Where an order for production does not specify particularly the documents asked to be produced, but no objection is taken to the order until after proceedings have been taken for disobedience of it, and after it has been made clear what document was wanted, the order will not be interfered with. R. *v.* Borrett, 24 N.Z.L.R. 584; 7 Gaz. L.R. 410. [*New Zealand.*]

WITNESSES EXAMINATION—Application before declaration filed.—An order directing a commission to issue for the examination of a witness abroad was made after the writ issued but before the declaration was filed. The Full Court *held* that the order was a good order within the provisions of sec. 4 of the Witnesses Examination Act, 1900. Williams *v.* Australian Mutual Provident Society, 21 W.N. 249. [*New South Wales.*]

—— **Commission to examine a material witness abroad.**—Where on an application for a commission to examine a witness abroad the Judge is satisfied that the evidence is material, that the witness is out of the jurisdiction and cannot be compelled to attend at the trial, he is bound to direct the commission to issue unless the other side satisfy him that the witness will be present. Williams *v.* Mutual Life Association of Australasia (No. 3), 4 S.R. 677; 21 W.N. 247. [*New South Wales.*]

—— **Terms of order.**—*See* Phillipson *v.* *v.* Robertson, 1905 Q.W.N. 38. [*Queensland.*]

SUBPŒNA.—The names of all the witnesses to be called must be inserted in the subpœna in the first instance, and a party cannot alter a writ of subpœna after it is issued by adding the names of other witnesses except in the manner provided by Order XXXVII., r. 31. Mackay *v.* Hamilton, 1905 V.L.R. 457; 27 A.L.T. 1; 11 A.L.R. 237. [*Victoria.*]

CORROBORATION.—*See* Deserted Wives and Children—Divorce.

RES JUDICATA.—*See* Justices. And *see* Landlord and Tenant. Clisdell *v.* Gibney, 4 S.R. 670; 21 W.N. 237. [*New South Wales.*]

IN PARTICULAR CASES — Defamation—Reference to plaintiff.—*Semble*, where the words of an alleged libel do not unambiguously refer to the plaintiff, the defendant may call witnesses to prove that they read the libel, and did not understand it to refer to the plaintiff. GODHARD *v.* JAMES INGLIS & CO., LTD., 2 C.L.R. 78. [*New South Wales.*]

Factories and Shops Act.—*See* EARLY CLOSING.

Of false imprisonment by defendant.—*See* FALSE IMPRISONMENT. GREEN *v.* MCEVOY, 4 S.R. 667; 21 W.N. 223. [*New South Wales.*]

Malicious prosecution. — *See* MALICIOUS PROSECUTION.

Passing off action—Cross-examination in camera.—*See* PASSING OFF. SANDNER *v.* CURNOW, 1905 V.L.R. 648; 27 A.L.T. 85; 11 A.L.R. 483. [*Victoria.*]

In pre-maternity cases.—*See* DESERTED WIVES AND CHILDREN.

Proof of injury to health.—*See* LICENSING. KRUMMEL *v.* KIDD, 1905 V.L.R. 193; 26 A.L.T. 131. [*Victoria.*]

And *see* various headings.

EXECUTION.

Separate executions for debt and costs.—Where upon a judgment an order for the recovery or payment of a sum of money and costs, the costs have been taxed and ascertained, separate writs of execution for the recovery of the sum and for the recovery of the costs cannot be issued. O'NEIL *v.* HART (2), 1905 V.L.R. 259. [*Victoria.*]

Execution for costs—When to be issued.—It is an abuse of process of the Court to issue execution for costs on the same day on which such costs have been taxed. *Cruickshank* v. *Moss* ([1863] 8 L.T.N.S. 439) approved. O'NEIL *v.* HART, 1905 V.L.R. 259. [*Victoria.*]

Fieri facias—Departure from judgment.—A writ of *fieri facias* should accord in all respects with the judgment or order it seeks to enforce; and if it departs from such judgment or order in any particular—*e.g.*, as to parties—it must show on its face the reason for such departure. Where a judgment is against two persons jointly a writ of execution issued as if such judgment were against one only of such persons is bad. *Crowley* v. *Union Bank* ([1903] 2) V.L.R. 385), followed. O'NEIL *v.* HART (2), 1905 V.L.R. 259. [*Victoria.*]

—— **Form of writ.**—In all cases of a writ of *fi. fa.* on a judgment, the Form No. 1 in Appendix H., to the rules of the Supreme Court, 1884, is the proper form. Form No. 2 is applicable only in the case of a writ of *fi. fa.* upon an order for costs only. O'NEIL *v.* HART (2), 1905 V.L.R. 259. [*Victoria.*]

—— **Irregularity—Time for objecting.**—Objections on the ground of irregularity to a writ of *fieri facias* at any time before a sale under it takes place, are made within a reasonable time. O'NEIL *v.* HART, 1905 V.L.R. 259. [*Victoria.*]

Sale—Writ of fieri facias irregular.—A sale under a writ of *fieri facias* may be bad even as against purchasers, if it be pointed out before the sale that the writ is irregular, and that there is no right to sell. O'NEIL *v.* HART (2), 1905 V.L.R. 259. [*Victoria.*]

Sale by Sheriff of interest under will.—*See* REAL PROPERTY ACT. TRUSTEES EXECUTORS AND AGENCY CO. *v.* BUTLER, 1905 V.L.R. 650; 27 A.L.T. 63; 11 A.L.R. 365. [*Victoria.*]

Charging order.—The right to issue a charging order before judgment, by leave of the Court, is not limited to actions for a liquidated amount. A registrar acting under a Judge under the Supreme Court Practice and Procedure Acts Amendment Act, 1893, has no power to give leave to issue a charging order before a judgment, as that can only be done by an order of Court. GARDNER *v.* FRANCIS, 24 N.Z.L.R. 544; 7 Gaz. L.R. 68. [*New Zealand.*]

—— **Untaxed costs.**—A charging order cannot be given except for an ascertained sum, and therefore cannot be given in respect of costs until they have been taxed. *Widgery* v. *Tepper* (6. Ch. D. 364), followed. WILKIE *v.* MCCALLA, 1905 V.L.R. 80; 26 A.L.T. 122; 11 A.L.R. 48. [*Victoria.*]

Setting aside—Set-off of costs.—The judgment debtor's costs of setting aside a writ of *fieri facias* should not be set off against the judgment creditor's costs in the action. O'NEIL *v.* HART, 1905 V.L.R. 259. [*Victoria.*]

Sheriff's fees.—Order made under sec. 18 of the Sheriffs Act, 1883, *quantum valeat*, fixing the amount of fees to be taken by the sheriff for taking and holding possession of chattels under a writ of sale, being the fees payable under the scale made under sec. 17 of the Act. *Quære*, whether sec. 18 is not limited to providing for no scale being fixed, or for fixing the fee in any case not comprised in the scale. HENDERSON & CO. *v.* WILLIAMSON & CO., 7 N.Z. Gaz. L.R. 379. [*New Zealand.*]

A keeper put in possession under an execution refused to remain. *Held*, that, there being no charge of negligence or unreasonableness in choosing such keeper, the sheriff was entitled to charge mileage for his officer taking out another keeper and putting him in possession. MASSEY HARRIS CO. *v.* FOLEY, 22 W.N. 6. [*New South Wales.*]

Election of remedies.—*See* ARREST, FERRIS

v. MARTIN, 2 C.L.R. 525; 11 A.L.R. 470. [*New South Wales.*]

Stay of execution.—*See* FEDERAL LAW—PRACTICE.

EXECUTOR AND ADMINISTRATOR.

EXECUTOR—Legacies—Lapse.—A testator declared that if F.S., a legatee, should predecease him, certain moneys directed by the will to be paid to F.S. should be paid to the executors or administrators of F.S., to be disposed of as part of the personal estate of F.S. F.S. resided in England and died there in the testator's lifetime. The will of F.S. had been proved in England, but not in South Australia, nor had the English probate been re-sealed in this State. *Held*, that the gift to F.S. had lapsed, but that his executrixes took it by virtue of the special provision above referred to, and that it was not part of the estate of F.S. and did not pass under his will; and, further, that his executrixes were entitled to be paid the moneys referred to without proving his will or re-sealing the English probate in South Australia. *The Lord Advocate* v. *Bogie* ([1894] A.C. 83) followed. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

—— **Interest.**—A testator directed his trustees to set apart and invest a sum of £20,000 and to pay the income derived from such investment to his adult sister E.L.S. during spinsterhood. The trustees having, pursuant to such direction, and within one year from the death of the testator, set apart and invested several sums to meet the said legacy, such sums amounting in all to £20,000: *Held*, that the legatee, who was still unmarried, was entitled to the interest on such several sums from the time of their respective setting apart and investment, notwithstanding that a period of twelve months had not elapsed from the testator's death. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

—— **Abatement.**—*See* NATIVE LANDS. ATTORNEY-GENERAL *v.* SETH SMITH, 7 N.Z. Gaz. L.R. 662. [*New Zealand.*]

—— **Bequest of shares with contingent liability—Transfer to legatee—Indemnity.**—A testator bequeathed certain shares in certain corporations; of these shares some were partially paid up, others were fully paid up, but were subject to a contingent liability. Upon the execution by the respective specific legatees of indemnities to the executor and the residuary legatees and the consent of the respective corporations: *Declared* that the executor would be justified in transferring the shares in question to the respective specific legatees, and in transferring the residuary estate to the residuary legatees without retaining any portion thereof to provide for the contingent liabilities upon the shares in question. MACKENZIE *v.* BLOMFIELD, 5 S.R. 209; 22 W.N. 76. [*New South Wales.*]

—— **To infant.**—The Court has no power under sec. 84 of the Wills Probate and Administration Act, 1898, to order payment of a legacy bequeathed to an infant to such infant or his next friend. *Re* SMITH, 22 W.N. 4. [*New South Wales.*]

An infant is entitled to payment of and can give a valid discharge for a legacy during minority where, on the construction of the will, it appears that such was the testator's intention. *In re* MEARS; MEARS *v.* MEARS, 5 S.R. 1, 40; 22 W.N. 49. [*New South Wales.*]

—— **Annuity left by will.**—*See* ANNUITY.

—— **Plan of distribution.**—The Court will not approve a plan of distribution except upon the certificate of the Registrar that the plan is a proper one. *In the will of* ROSSITTER, 22 W.N. 115. [*New South Wales.*]

—— **Locke King's Act.**—*See* MORTGAGE.

—— **Rights, duties and liabilities—Carrying on business at request of creditor—Indemnity.**—*See* BANKRUPTCY AND INSOLVENCY. *In re* LEESON, 26 A.L.T. 173; 11 A.L.R. 59. [*Victoria.*]

—— **Sale of realty—Infant's shares.**—When an executor obtains power to sell real estate as to which the testator died intestate, the Court will not order the shares of infants or of next of kin residing out of the State to be paid into Court. *In the will of* EGAN, 22 W.N. 158. [*New South Wales.*]

—— **Executor of executor—Power to sell the real estate of original testator.**—The original testator being seised of real estate died in 1895. Probate of his will was granted to his wife, the sole executrix. The sole executrix died in 1901. *Held*, that the executors of the sole executrix to whom probate had been granted had power to sell the real estate of the original testator. *Ex parte* MANNING, 5 S.R. 453; 22 W.N. 114. [*New South Wales.*]

—— **Leave to sell—Terms.**—Leave was given to the executors to sell real estate which had been the subject of an administration suit on terms agreed to between the plaintiffs in that suit and the executors, who were the defendants, though those terms departed from Sch. I., Part XI., No. 21 of

the rules of the Supreme Court. *Re* SMALES, 1905 Q.W.N. 51. [*Queensland.*]

—— **Debts—Rents for Crown lease.**—Rents in respect of a Crown lease which become payable at the death of a testator, and which are paid by his executrix, to whom a grant in fee simple is thereafter issued, are not "debts" until the payments actually fall due, and therefore, are not payable out of a fund provided by the testator for payment of his debts. Such land having been left to tenants for life with remainders over, such payments of rent are a charge on the land, and the life tenants are bound to keep such charge alive by paying interest. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

—— **Debt owing by executor—Statute of Limitations.**—Where one of two executors was indebted to the testator at the time of his death, the debt is an asset of the testator in the hands of that executor. *Ingle* v. *Richards* (28 Beav. 366), followed. Sec. 29 of the Trusts Act, 1896, excludes that executor from availing himself of the Statute of Limitations. ELLIOTT *v.* CAMPBELL, 1905 V.L.R. 596; 27 A.L.T. 69, 128; 11 A.L.R. 331. [*Victoria.*]

—— **Personal and representative liability—Price of goods purchased in deceased's business—Election.**—M.A.F. and C.E.F., as executrixes of D.F. deceased, and under a power in his will, carried on the business of their testator until the death of C.E.F. After the death of D.F., and before the death of C.E.F., goods were supplied by the plaintiffs for the purposes of the business, and M.A.F. and C.E.F. gave to the plaintiffs promissory notes for the price of such goods. After the death of C.E.F., the plaintiffs brought an action in the local Court against M.A.F., as surviving executrix of D.F., in respect of the balance due on these promissory notes, and recovered judgment. That judgment remaining unpaid the plaintiffs commenced a second action in the local Court for the price of the same goods, against M.A.F. personally and X., as the administrator of the estate of C.E.F. On a plea of *res judicata* the plaintiffs were nonsuited in the local Court. *Held*, on appeal, that, there being one liability only, the doctrine of election had no application, and that the amount claimed was a debt for which the executrixes of D.F., were jointly liable, personally, and not *de bonis testatoris*; and, therefore, that M.A.F. being personally liable on the judgment in the first action her plea of *res judicata* to the second action was valid; but that, by virtue of sec. 86 of the Local Courts Act, 1886, the second action was maintainable against X. F. H. FAULDING & Co. *v.* FOTHERINGHAM, 1904 S.A.L.R. 1. [*South Australia.*]

—— **Notice to destroy rabbits—Service.**—*See* PASTURES PROTECTION. FOUNTAIN *v.* MCDONNELL, 7 N.Z. Gaz. L.R. 14. [*New Zealand.*]

ADMINISTRATOR—Sale of real estate.—It is not neccessary for persons to whom administration was granted prior to the passing of the Probate Act to obtain the leave of the Court before selling the real estate of an intestate for purposes of distribution. *Re Hall* (17 N.S.W.L.R. B. & P. 12); *Re Birch* (16 W.N. 135), followed. *In the estate of* BREMNER, 22 W.N. 108. [*New South Wales.*]

—— **Application for leave to sell—Affidavit as to amount of bond.**—*See* PROBATE AND ADMINISTRATION. *In the estate of* ROCK, 22 W.N. 216. [*New South Wales.*]

—— **Real estate of intestates distribution—"Heirs" meaning of.**—*In re* GOODWIN, 4 S.R. 682; 21 W.N. 222. [*New South Wales.*]

—— **Real estate—Descent.**—The question whether the real estate of an intestate who died before the coming into operation of the Real Estate Descent Act, 1874, was "real estate unadministered" within the meaning of sec. 6 of the Administration Act, 1879, depends upon whether or not such real estate was prior to the coming into operation of the Administration Act, 1879, liable to be administered under 3 & 4 Will. IV. c. 104. If the deceased left no debts, his real estate was not liable to be so administered, and would not pass to his administrator upon the grant of letters of administration under the administration Act, 1879. Neither sec. 8 of the Administration Act, 1879, Amendment Act, 1885, nor sec. 8 of the Property Law Consolidation Act, 1883, Amendment Act, 1885, enables an administrator in whom land is not vested to give a good title thereto. *In re* LAND TRANSFER ACT, 1885; *Ex parte* SMITH, 7 N.Z. Gaz. L.R. 567. [*New Zealand.*]

—— **Distribution—Intestate domiciled in Queensland—Realty situate in N. S. Wales.**—The property referred to in sec. 50 of the Wills Probate and Administration Act, 1898, so far as it is real estate, is the real estate situate in New South Wales, consequently where an intestate, domiciled in Queensland, died leaving a widow but no issue, the widow was held to be entitled to a preferential charge for £500 on the realty situate in New South Wales, notwithstanding that under the Queensland law she had also a preferential claim to the same extent on the assets situate in Queensland. *In re Rea; Rea* v. *Rea* ([1902] 1 Ir. 451), followed. QUEENSLAND TRUSTEES, LTD. *v.* NIGHTINGALE, 4 S.R. 751; 21 W.N. 259. [*New South Wales.*]

—— **Power of administrator of deceased partner to mortgage.**—*See* PARTNERSHIP. WALKER *v.* CREAVEN, 7 N.Z. Gaz. L.R. 435; 8 N.Z. Gaz. L.R. 113. [*New Zealand.*]

ACCOUNTS—Burial fee.—Clergyman's fee

for officiating at funeral not allowed. *In re* KENT, 1905 Q.W.N. 28. [*Queensland.*]

COMMISSION—Mortgage moneys re-invested—Apportionment.—The Court will not allow to the executors under a will a commission upon mortgage moneys paid off and re-invested by them. *In re Kennedy* (9 N.Z. L.R. S.C. 305), followed. The Court has no power to apportion the commission between co-executors, and commission can only be allowed to executors as a body. *In re Holmes* (15 V.L.R. 734), followed. *In the will of* ADAMS, 7 N.Z. Gaz. L.R. 660. [*New Zealand*]

—— **Amount—Practice.**—Where the estate and business being administered by executors or trustees is a sheep-farming one, the gross income of which is the price received for the wool produced and the cattle and sheep sold, and the actual management is intrusted to a duly qualified and salaried manager, the duties of the executors or trustees being those of supervision and account-keeping, and not involving any considerable expenditure of time or labor, the executors or trustees ought only to receive a commission on the balance of income remaining after deducting wages and working expenses, unless there are very special circumstances justifying an allowance upon the gross income. Five per cent. on the net income is not too high a rate in such a case. An allowance for commission does not cover out-of-pocket expenses, and if it is necessary for any of the executors or trustees in such a case, in the interests of the estate, to visit the run, they are entitled to charge their reasonable outlay for travelling expenses. An order allowing commission to executors or trustees ought not to be made *ex parte*. Where an application is made to a Judge for commission, the practice is to refer the matter to the Registrar to report, and it is the duty of the Registrar to give notice to all persons interested who are accessible to attend before him in order that they may be heard. Where a Registrar acts for and on behalf of the Judge, and therefore does not make any report, notice of the application for commission ought to be given to the persons interested, in order that they may attend upon the hearing of the application. Where an order for commission on the gross income had been made by the Registrar *ex parte*, and the Court was of opinion that commission should have been allowed on the net income only, the Court nevertheless refused to order a refund by the executors, they having received commission for five years under the order of the Registrar, to the knowledge of the beneficiaries and without objection on their part. *In re* KERR; KERR AND OTHERS *v.* COCK AND OTHERS, 24 N.Z. L.R. 1. [*New Zealand.*]

ADMINISTRATION ACTION—Income due to tenant for life.—An action as for money had and received will not lie against trustees for income claimed to be due by a tenant for life of the income of residue under a will, unless there has been an admission by the defendants that the sum claimed is held by them for the use of the plaintiff. The remedy in equity before the Supreme Court Act, 1878, was, and the only remedy still is, an action for administration of the estate, and, in administering the estate, debts, testamentary expenses, interest, and annuities, must first be provided for in a due course of administration. PHILLIPSON *v.* DOWNER, 1904 S.A. L.R. 128. [*South Australia.*]

—— **Conduct.**—Where the plaintiff, a co-trustee with the three defendants under her late husband's will, was also tenant for life of the income of the residuary estate, and had been absent from South Australia for several years, and was now resident in New South Wales, the conduct of the administration proceedings was given to the defendants, who had been guilty of no misconduct, and had no interest adverse to any creditor or beneficiary. PHILLIPSON *v.* DOWNER, 1904 S.A.L.R. 128. [*South Australia.*]

—— **Suit relating solely to realty—Costs.**—Where an administration suit in fact related only to the real estate in the trust the Court ordered the entire costs of suit to be thrown on the realty. METCALFE *v.* O'KENNEDY, 4 S.R. 633; 21 W.N. 240. [*New South Wales.*]

STAMP DUTY on real estate.—*See* STAMP DUTIES. *In re* LAND TRANSFER ACT, 1885; *Ex parte* SMITH, 7 N.Z. Gaz. L.R. 567. [*New Zealand.*]

EXTRADITION.

Powers of Crown.—*Quære*, whether the Crown can extradite a fugitive offender, either to a foreign country or to another part of the British dominions, without the authority of a legislative enactment. *Dictum* of Heath J. in *Mure* v. *Kaye* (4 Taunt. 34), disapproved. BROWN *v.* LIZARS, 1905 V.L.R. 165, 540; 26 A.L.T. 159; 11 A.L.R. 42, 345. [*Victoria.*]

FACTORIES & SHOPS.

Abattoir.—The Slaughtering and Inspection Act, 1900, must be read, as far as it affects abattoirs, as overruling the Factories Act, 1901, and it is not necessary to register as a 'factory" under the Factories Act, 1901, an abattoir established and maintained under the Slaughtering and Inspection Act, 1900, by a local authority. KEDDIE *v.* THE MAYOR, COUNCILLORS AND BURGHESSES OF THE BOROUGH OF TIMARU, 24 N.Z.L.R. 704; 7 Gaz. L.R. 535. [*New Zealand.*]

Employer—Contract with registered factory—Wages.—The provisions of sec. 15 sub-secs. 19 and 20 of the Factories and Shops Act 1900, do not compel a warehouseman who

has contracted with the proprietor of a registered factory, to manufacture, out of material supplied, articles of underclothing in or in connection with his factory, to pay to such proprietor a price based upon the wages rate fixed by the Special Board in respect of the manufacture of such articles by factory operatives; the warehouseman in such a case is not an "employer" within sub-sec. 19. *Semble*, the Factories and Shops Acts extends to all operatives employed in a trade or business made subject to the Acts, whether such operatives are or are not engaged in, or in connection with, a factory. Decision of the Full Court of Victoria (10 A.L.R. 204) reversed. BEATH, SCHIESS & Co. *v.* MARTIN, 2 C.L.R. 716; 1905 V.L.R. 386; 10 A.L.R. 204; 11 A.L.R. 325. [*Victoria.*]

Working hours for females—Week.—In sec. 21 of Act No. 1445, the term "week" means, as applied to factories in which persons are employed by the week, a week of work, that is from pay day to pay day. BISHOP *v.* HOOPER, 1905 V.L.R. 220; 26 A.L.T.157; 11 A.L.R. 64. [*Victoria.*]

Closing hours.—*See* EARLY CLOSING.

FALSE IMPRISONMENT.

What is.—Holding a man by the sleeve with the thumb and finger, or even laying the hand on his shoulder or catching him by the shoulder, does not amount to false imprisonment where it is not said that he could not have got away if he had desired to do so. There must be some restraint on the plaintiff's liberty. MACINTOSH *v.* COHEN, 24 N.Z.L.R. 625. [*New Zealand.*]

Right of arrest.—The plaintiff, a mail guard employed by the Postal Department of the Commonwealth, was in the habit of sleeping in a travelling railway van in which he carried out his duties. While the van was at Kalgoorlie, the plaintiff entered the railway premises for the purpose of proceeding to the van, and was ordered to leave by one Luney, night station-master in the employ of the defendant. On his refusing to go an altercation took place and he was given into the custody of a constable by Luney, and detained on a charge of wilfully impeding and obstructing an officer of the Railway Department in the execution of his duty. He was subsequently brought before a justice of the peace, who after hearing the evidence discharged him. The plaintiff then sued the defendant for damages for false imprisonment and malicious prosecution. The defendant denied liability on the ground of want of authority in Luney and reasonable and probable cause. At the hearing before Mr. Commissioner Roe and a special jury the claim under the head of malicious prosecution was abandoned. The questions put to the jury and the answers thereto were as follows—(1) Was the plaintiff given into custody by Luney? Yes. (2) Was the plaintiff on the railway platform between seven and half-past ten? Not agreed. (3) On what charge was the plaintiff given into custody? Wilfully impeding and obstructing an officer in the execution of his duty. (4) Did Luney honestly believe in the full charge he laid before the magistrate? Yes. (5) Was Luney actuated by malice in causing the plaintiff to be arrested? No. (6) Damages? None. Upon these findings judgment was entered for the defendant. The plaintiff moved for a new trial on several grounds, the principal of which were that questions four and five did not arise upon the issues, and misdirection as to the effect of the honest belief of the defendant as to the guilt of the plaintiff, and as to the effect of the defendant having had reasonable and probable cause in an action for false imprisonment, as distinguished from an action for malicious prosecution. *Held*, that a record of acquittal in a criminal matter is inadmissible as evidence of the same fact in controversy in a subsequent civil suit. *Held, also*, that the words "other person in the employ of the Government," in sec. H. of the Shortening Ordinance (Interpretation Act, 1898), are *ejusdem generis* with the preceding words, "justice of the peace, officer of police, policeman, constable, or peace officer," and therefore do not include the Commissioner of Railways where the section is incorporated in a Railway Act. *Held, also*, that the defendant in this case not being within the protection of Section H., and the action being for false imprisonment and not for malicious prosecution, the onus lay on him of justifying the arrest of the plaintiff by his servant under his implied authority, by proving that the plaintiff was in fact guilty of the offence for which he was arrested, and no question having been left to the jury on this point the judgment must be set aside. Whether the Commissioner of Railways is a person in the employ of the Government, *quære*? O'BRIEN *v.* COMMISSIONER OF RAILWAYS, 7 W.A.L.R. 119. [*Western Australia.*]

Liability of Railway Commissioners for arrest by servant.—*See* RAILWAYS. HAMILTON *v.* RAILWAY COMMISSIONERS, 5 S.R. 267; 22 W.N. 69. [*New South Wales.*]

Proof of direction by defendant to detain plaintiff—Signing charge sheet.—The plaintiff having been arrested and taken to a police station, the arresting constable told the defendant that he would not go on with the case unless the defendant signed the charge sheet. The defendant said he would sign the charge sheet and afterwards the plaintiff was locked up, but evidence that the defendant did sign the charge sheet was not tendered in consequence of the decision in *Lloyd* v. *Osborne* (20 N.W.S.L.R. 127; 15 W.N. 267). *Held*, that there was no evidence that the

defendant authorised or directed the detention of the plaintiff. GREEN *v.* MCEVOY, 4 S.R. 667; 21 W.N. 223. [*New South Wales.*]

Lunatic—Vexatious action.—*See* PRACTICE. MCLAUGHLIN *v.* WESTGARTH, 4 S.R. 660; 21 W.N. 225. [*New South Wales.*]

FEDERAL LAW.

COMMONWEALTH. — Discovery against Commonwealth. *See* DISCOVERY AND INSPECTION.

STATUTES—Construction.—In construing Commonwealth Statutes the decisions of sister States should be followed. MANN *v.* AH ON, 7 W.A.L.R. 182. [*Western Australia.*]

PROHIBITED IMMIGRANT—Certificate.—By sec. 4 of Act No. 17 of 1901 it is provided that "upon the expiration or cancellation of a certificate of exemption the person named there may, if found within the Commonwealth, be treated as a prohibited immigrant offending against the Act." *Held*, that the proper construction of this section is that upon the expiration or cancellation of the certificate the person named therein may be proceeded against as a prohibited immigrant; the effect of the certificate being merely to suspend the operation. As to the test required by sec. 3, sub-sec. (A), *Christie* v. *Ah Foo* (29 V.L.R. 533), followed. (*Per* McMillan J. In construing Commonwealth Acts, this Court should follow the decisions of sister States). MANN *v.* AH ON, 7 W.A.L.R. 182. [*Western Australia.*]

—— **State Court declining jurisdiction—Appeal.**—Where a Court of a State declines jurisdiction in a matter as to which it is invested with Federal jurisdiction, the remedy is by recourse to the appellate jurisdiction of the High Court. The Federal jurisdiction which Parliament is by sec. 77 of the Constitution authorised to confer upon the Courts of the several States, and upon Federal Courts other than the High Court, includes both original and appellate jurisdiction. Sec. 39 of the Judiciary Act, 1903, is a valid exercise of the authority so conferred, and under it the Courts of the several States have Federal appellate jurisdiction, as regards the matters enumerated in secs. 75 and 76 of the constitution, to the same extent that, and subject to the same conditions as, under the State laws they have appellate jurisdiction in matters to which the State laws apply. *Held*, therefore, that a person being convicted in Victoria by a Police Magistrate of an offence under sec. 7 of the Immigration Restriction Act, 1901, and by sec. 127 of the Justices Act, 1890 (Vict.), an appeal lying from a conviction by a police magistrate to a Court of General Sessions, such person may appeal to a Court of General Sessions. AH YICK *v.* LEHMERT, 2 C.L.R. 593; 11 A.L.R. 306. [*Victoria.*]

DISCRIMINATION—Constitution Act, sec. 117—Administration Act (Western Australia).—The Administration Act of Western Australia (1903 No. 13), sec. 86, imposes a duty on the final balance of the real and personal estate of the deceased according to fixed rates, and contains a proviso that in so far as beneficial interests pass to persons *bona fide* residents of and domiciled in Western Australia, and occupying towards the deceased a certain relationship, duty shall be calculated so as to charge only one-half of the percentage upon the property so acquired by such persons. The plaintiffs, executors of the will of E.W.D., late of Western Australia, paid succession duty at the rate of nine per cent. under the above section on a sum of £8,055, representing the value of property passing under the will to one A.E.D., who at the death of the testator was a British subject, *bona fide* resident, and domiciled in Queensland, and who occupied towards the deceased the required relationship. The payment was made under protest, and the plaintiffs sued to recover half the amount paid, on the ground that the section of the Act under which it was claimed, worked a discrimination contrary to sec. 117 of the Constitution. *Held*, that the real ground of the discrimination prescribed by the section of the Administration Act was domicil and not residence, and that, consequently, the enactment was not void under sec. 117 of the Constitution, as setting up a discrimination between the residents of different States. *Per* Barton J.—"It is discrimination on the sole ground of residence outside the legislating State that the Constitution aims at in sec. 117." DAVIES *v.* THE STATE OF WESTERN AUSTRALIA, 2 C.L.R. 29; 11 A.L.R. 73. [*Western Australia.*]

HIGH COURT Jurisdiction — Constitution—Privy Council Appeal.—By sec. 30 of the Judiciary Act, 1903, the High Court is given original jurisdiction in all matters arising under the Constitution or involving its interpretation. Secs. 38 and 39 of that Act purport to take away from the State Courts jurisdiction in such matters, but re-invest such Courts with jurisdiction, but only as Federal jurisdiction. Sec. 39 (2) (*a*) provides that every decision of the Court of a State from which an appeal lay to the Privy Council as the establishment of the Commonwealth shall be final and conclusive, except so far as an appeal may be brought to the High Court. *Held*, that, in so far as section 39 (2) (*a*) purports to take away the right of appeals to the Privy Council, it is *ultra vires* the powers

conferred on the Commonwealth Parliament by the Constitution. *Held, further*, that, in so far as an appeal lies from a State Court to the Privy Council under the powers conferred by the Order in Council of 9th June, 1860, an Act of the Commonwealth Parliament cannot alter, qualify, or in part repeal the rights given by such Order in Council. *In re* INCOME TAX ACTS, 1905 V.L.R. 463; 26 A.L.T. 198; 11 A.L.R. 117. [*Victoria.*]

—— **Following State decisions.**—*See* DECIDED CASES. DARBYSHIRE *v.* DARBYSHIRE, 2 C.L.R. 787; 1905 V.L.R. 239; 26 A.L.T. 123; 11 A.L.R. 14, 437. [*Victoria.*]

—— **Appeal—What decision may be appealed from—Judgment of Supreme Court of State—Judgment pronounced by single Judge in Chambers.**—The words "the Supreme Court of any State" in sec. 73 of the Constitution are used to designate that Court which at the time of the establishment of the Commonwealth was in any particular State known by the name of "the Supreme Court" of that State. *Held*, therefore, that, subject to the conditions mentioned in that section, an appeal lies to the High Court from every judgment, &c., which, according to the law of a particular State, is a judgment, etc., of the Supreme Court of that State. *Saunders* v. *Borthistle* (1 C.L.R. 379), followed. An order made by a Judge of the Supreme Court of Victoria sitting in Chambers, upon an originating summons, by which the rights of the parties under a will are finally decided, is, under the Statute law of that State, an order of the Supreme Court. *Semble*, an order made in Chambers by a Judge of the Supreme Court of a State, even apart from express legislation in that State, is an order of the Supreme Court of that State within the meaning of sec. 73 of the Constitution. The provision in sec. 73 of the Constitution that "no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing or determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies . . . . to the Queen in Council" includes matters in which an appeal then lay either with or without special leave of the Privy Council. The conditions imposed by sec. 35 of the Judiciary Act, 1903, on appeals to the High Court from judgments, &c., of the Supreme Court of a State are exhaustive. *Held*, therefore, that no special leave is necessary to appeal from the final judgment of the Supreme Court of a State pronounced by a Judge sitting as a Court of first instance for or in respect of any sum or matter at issue amounting to, or of the value of, £300. PARKIN *v.* JAMES, 2 C.L.R. 315; 11 A.L.R. 142. [*High Court.*]

—— **Decision before establishment of Commonwealth.**—The High Court has no jurisdiction to entertain an appeal from a decision of the Supreme Court of a State pronounced before the establishment of the Commonwealth. *Ex parte* MATTHEWS, 2 C.L.R. 93. [*High Court.*]

—— **Interlocutory judgment—Setting aside notice of appeal.**—R. 9 of Part 2, sec. 4, of the High Court Rules does not give jurisdiction to set aside a notice of appeal from an interlocutory judgment of the Supreme Court where leave to appeal can be granted by either the Supreme Court or the High Court. The rule only applies to cases where the High Court has exclusive power to grant leave to appeal. A rule absolute setting aside a nonsuit and granting a new trial is an interlocutory judgment. MCKEON *v.* MILLER, 22 W.N. 22. [*New South Wales.*]

—— **Question of fact.**—The rule that an appellate Court ought not to disturb the conclusions of the Court appealed from on a question of fact has no application where there is no conflict of testimony, and the only question of fact is the proper inference to be drawn from the undisputed facts. *Thurburn* v. *Steward* (L.R. 3 P.C. 478), followed. LUKE *v.* WAITE, 2 C.L.R. 252; 11 A.L.R. 107. [*High Court*]

—— **Rule of practice.**—Where a State Court has settled a rule of practice relating to its own procedure, the High Court will not review it. FERRIS *v.* MARTIN, 2 C.L.R. 525; 11 A.L.R. 470. [*High Court.*]

—— **Order granting new trial.**—When a party has obtained a new trial on the ground of the improper rejection of evidence, if the evidence was relevant to the issue on which it was tendered and the ground on which the evidence was originally rejected was erroneous, it is not a ground for allowing an appeal from the order granting the new trial, that the exact grounds of relevancy were not stated to the Court. Decision of the Supreme Court ([1904] 4 S.R. 454), affirmed. HARRIS *v.* SYDNEY GLASS AND TILE CO., 2 C.L.R. 227; 11 A.L.R. 49. [*High Court.*]

—— **Suspension of solicitor.**—The High Court will not grant special leave to appeal from an order of the Supreme Court suspending a solicitor from practice—at all events where there is no reason to doubt the substantial correctness of the order. *In re* COLEMAN, 2 C.L.R. 834; 11 A.L.R. 243. [*High Court.*]

—— **Appealable amount—Special leave.**—*Semble*, where the judgment of a State Supreme Court indirectly involves a sum amounting to or of the value of £300, special leave to appeal is not necessary. MARKELL *v.* LOCKYER, 11 A.L.R. 485; PARKIN *v.* JAMES, 2 C.L.R. 315; 11 A.L.R. 142. [*High Court.*]

—— **Special leave.**—On an appeal from a final judgment of the Supreme Court of a State, it is open to the appellant, without obtaining leave, to question any interlocutory

or other order, which was a step in the procedure leading up to the final judgment. A defendant against whom a verdict for £500 had been obtained in an action at *nisi prius* in the Supreme Court of New South Wales, applied to the Full Court of the State for a rule *nisi* for a new trial on several grounds. A rule was refused on certain grounds, and granted on others; but on the motion to make the rule absolute, it was discharged. The defendant, being desirous of appealing to the High Court from the final judgment of the Supreme Court and of raising on the appeal the grounds as to which that Court had decided against him on the application for a rule *nisi*, moved the High Court for leave to appeal from the order of the Supreme Court refusing to grant a rule *nisi* on those grounds. *Held*, that leave was not necessary. CROWLEY *v.* GLISSAN, 2 C.L.R. 402. [*High Court.*]

In granting special leave to appeal where the sum involved is very small, the Court may make it a term that the respondent's costs of the appeal are, in any event, to be paid by the appellant. MUTUAL LIFE INSURANCE CO. OF NEW YORK *v.* PECHOTSCH, 2 C.L.R. 823; 11 A.L.R. 467. [*High Court.*]

Even if the judgment of the Supreme Court may appear to be erroneous special leave to appeal will not be granted if the error has arisen from a wrong inference of fact, or from a wrong application to the facts of a well-known rule of law—at all events where the sum involved is much below the appealable amount. LEARMONTH *v.* ATKINSON, 11 A.L.R 287. [*High Court.*]

In an action of ejectment in the local Court the respondent obtained an order under the Small Debts Act of Western Australia (27 Vict. No. 21), for recovery of possession of certain premises of the annual value of not more than £20. The appellant made no objection to the jurisdiction of the Court. The time for issuing execution was allowed to expire. Afterwards the respondent brought an action in the Supreme Court founded on the judgment of the local Court. The Chief Justice at *Nisi Prius held* that the judgment of the local Court was conclusive, and rejected evidence tendered by the appellant to show that the case was not within its jurisdiction. The Supreme Court of Western Australia affirmed his decision. On an application for special leave to appeal from the judgment of the Supreme Court, *held*, that, even if the Supreme Court was in error in holding that the judgment of an inferior Court could not be disputed unless it had been disputed in the local Court itself, the discretion of this Court to grant special leave to appeal should not be exercised where so small an amount was involved, and when the appellant had lain by in the local Court and taken the chance of a judgment in his favour. Rule in *Mayor of London* v. *Cox* (L.R. 2 H.L. 239), applied. ZIMPEL *v.* ALLARD, 2 C.L.R. 117. [*High Court.*]

A firm of timber merchants of which the defendant was a member, gave to a firm of manufacturers, who contemplated tendering for a contract with the city of Sydney council, a quotation of the prices at which they were prepared to supply them with timber for the purposes of the contract. The tender was sent in, and was accepted by the council, of which the defendant had in the meantime been elected a member. Subsequently, while the defendant continued in the council, his firm supplied timber at the prices quoted to the contractors, who used it in carrying out their contract. The Supreme Court having decided on an appeal from a magistrate, that the defendant was not "interested" in the contract within the meaning of sec. 24 of the Sydney Corporation Act, 1902, the High Court, seeing no reason to doubt the correctness of that decision, refused to grant special leave to appeal. Rule laid down by Lord Watson in *La Cite de Montreal* v. *Les Ecclesiastiques du Seminaire de St. Sulpice de Montreal* (14 App. Cas. 660, at p. 662), as to granting special leave to appeal, applied. *Le Feuvre* v. *Lankester* (3 El. & Bl. 530; 23 L.J.Q.B. 254), followed. Special leave to appeal to the High Court from the decision of Pring J. (22 N.S.W.W.N. 36), refused. NORTON *v.* TAYLOR, 2 C.L.R. 291. [*High Court.*]

Decision clearly right. *See* CRIMINAL LAW. LILLIECRAP *v.* R., 2 C.L.R. 681. [*High Court.*]

Special leave to appeal to the High Court from a judgment of the Supreme Court of a State, in a case involving less than the appealable amount, will not be granted by the High Court where the questions involved are mere questions of fact, nor, even in a case involving an important question of law, if the judgment from which leave to appeal is sought appears to the Court to be unattended with sufficient doubt to justify the granting of leave. *Daily Telegraph Newspaper Co., Ltd.* v. *McLaughlin* (1 C.L.R. 479; [1904] A.C. 776), followed. Application for special leave to appeal from the judgment of the Supreme Court of Queensand ([1904] S.R.Q. 288), refused. JOHANSEN *v.* CITY MUTUAL LIFE ASSURANCE SOCIETY, LTD., 2 C.L.R. 186; 11 A.L.R. 6. [*High Court.*]

—— **Practice—Judiciary Act (1903 No. 6), s. 56—Cause of action existing before Judiciary Act passed.**—Part 9 of the Judiciary Act relates to matters of procedure only. It is therefore retrospective and applies to actions begun after the passing of that Act, although the cause of action existed or occurred before that Act was passed. BAUME *v.* COMMONWEALTH OF AUSTRALIA, 4 N.S.W.S.R. 709; 21 W.N. 226. [*New South Wales.*]

—— **Delay—Dismissal for want of prosecution.**—Where an appellant has a substantial ground of appeal, and has shown his *bona fides* by promptly giving security and taking all other necessary steps in the prosecution of his appeal, the mere failure to set the appeal down for hearing at the proper sittings of the Court, as prescribed by the Appeal Rules, is

not in itself a sufficient ground for dismissing the appeal for want of prosecution. An appellant filed and served notice of appeal on 7th September, 1904, and on the next day lodged security, £50, though, under the Appeal Rules, he need not have done so till three months later. By r. 12 of sec. III. of the Amended Appeal Rules of 22nd August, 1904, the appellant was bound, under these circumstances, to set down the appeal for hearing at the sittings of the High Court in November, 1904, whereas if he had waited until the expiration of the three months allowed for the giving of security, he would not have been obliged to set the appeal down until the subsequent sittings. The appeal not having been set down within the time prescribed, certain of the respondents moved to have it dismissed for want of prosecution. The motion was dismissed, upon the appellant undertaking to set the appeal down for hearing at the then present sittings, but the appellant was ordered to pay the costs of the motion. The Court refused to make the payment of these costs by the appellant a condition precedent to the entertaining of the appeal. *In re* YOUNG; BRICKWOOD *v.* YOUNG, 2 C.L.R. 74; 11 A.L.R. 5. *High Court.*]

—— **Grounds.**—An appellant to the High Court is not limited to the grounds argued in the Supreme Court, so long as the respondent is not prejudiced. FERRIS *v.* MARTIN, 2 C.L.R. 525; 11 A.L.R. 470. [*High Court.*]

—— **Appeal book—Documents—Evidence.**—In preparing the appeal book for an appeal from the Supreme Court of a State, the appellant is not required by the Rules of the High Court, 1903, Part II., sec. IV., rr. 11, 15, to include all the documentary evidence but should include such documents as he thinks necessary. The respondent may apply to the Court to have inserted any documents which he thinks are necessary, and which have been omitted. WILKIE *v.* WILKIE, 2 C.L.R. 383; 11 A.L.R. (C.N.) 21. [*High Court.*]

—— **New party—Substitution.**—Where it became necessary, after the institution of an appeal to the High Court, to have the name of a new party substituted for that of the appellant, there being no provision for such a case in the Appeal Rules, the High Court made an order analogous to that prescribed by r. 4 of Order XI., Pt. 1 of the Rules of the High Court, 1903, that the appeal should be carried on between the new party, as appellant, and the original respondent, and that the proceedings should be amended accordingly. WILLIAMS *v.* AUSTRALIAN MUTUAL PROVIDENT SOCIETY, 2 C.L.R. 385; 11 A.L.R. 438. [*High Court.*]

—— **Varying decree by consent.**—Where both parties to an appeal consent, the High Court may vary the decree appealed from so as to give the appellant part of the relief which he seeks, and make such an order as would, if the parties had consented, have been made by the Court whose judgment is appealed from. WILSON *v.* CARMICHAEL, 2 C.L.R. 190; 11 A.L.R. (C.N.) 38. [*High Court.*]

—— **Stay of proceedings.**—An appeal to the High Court from part of a decree of a State Court suspends the execution of the whole decree, including the part against which there is no appeal; the Court appealed from having power to allow execution to proceed on security being given to abide the decision of the High Court. BENNETT *v.* BROWNE, 22 W.N. 185. [*New South Wales.*]

—— **Judgment of High Court.**—A judgment entered in the Supreme Court, in pursuance of a judgment of the High Court, is in fact a judgment of the High Court. The Full Court has no jurisdiction to stay proceedings on the judgment so entered up pending application for leave to appeal to the Privy Council. Where there is no appeal as of right, no stay should be granted. BECHTEL *v.* GOODE, 7 W.A.L.R. 112. [*Western Australia.*]

—— **Costs—Order for payment—Attachment—New trial.**—An order for payment of the costs of an appeal is an order for the payment of money to some person within the meaning of Rules of the High Court, 1903, Part I., Order XXXV., r. 1. Therefore, an order of the High Court for payment of the costs of an appeal from the Supreme Court of a State will not be enforced by attachment. Nor will the payment of the costs of an appeal in which a new trial is ordered be made a condition precedent to the new trial. LYSAGHT BROS. & CO., LTD. *v.* FALK (No. 2), 2 C.L.R. 443; 11 A.L.R. 445. [*High Court.*]

—— **On special leave.**—*See* MUTUAL LIFE INSURANCE CO. OF NEW YORK *v.* PECHOTSCH, 2 C.L.R. 823; 11 A.L.R. 467., *col.* 127.

—— **Set-off.**—Order made for setting off costs in Supreme Court, and for restraining upon terms execution for costs in High Court Appeal. FERRIS *v.* MARTIN, 2 C.L.R. 525; 11 A.L.R. 470. [*High Court.*]

SERVICE AND EXECUTION OF PROCESS—Application for leave to proceed—Affidavit.—In an application for leave to proceed under sec. 11 of the Service and Execution of Process Act, 1901, the affidavit in support should state the facts of the case so that the Judge may see where the cause of action arose, and should set out the words of the requisite endorsements or incorporate them by reference to the plaint summons filed with the Registrar. JOHNSON *v.* WILKINS, 27 A.L.T. Supp. 4; 11 A.L.R. (C.N.) 50. [*Victoria.*]

FENCES.

Discrepancy in boundaries.—Where there is a discrepancy between the boundary of a section as marked by pegs and as described in the land transfer title, and there is extrinsic evidence that a larger area than that shown in the title was pegged in the original survey, the pegged boundary should be taken as the correct one. MUELLER *v.* RUSSELL, 7 N.Z. Gaz. L.R. 451. [*New Zealand.*]

Repairing.—A and B were the owners of adjoining lands, the boundary-fence of which, 200 chains in length, had been erected by former owners of the lands. A verbal agreement between A. and B. to repair 20 chains of this fence was rescinded by A. before the work was commenced, and B. then served A. with a formal notice to repair the 20 chains. A. ignored the notice, and after the expiration of the statutory time, B. pulled down the 20 chains of fence, 9 chains of which had stood not on the true boundary, but on A.'s land. B. then re-erected the fence on the true boundary-line, using such of the old material as was suitable for the purpose, supplementing it with the necessary amount of new material, and altering in some respects the character of the fence. A. having declined to contribute to the cost of this work, B. brought an action against him in the magistrate's Court and recovered judgment for half the cost of the work, the magistrate also finding that the fence, as re-erected and repaired, was an advantage to both parties. *Held*, on appeal, that pulling down an old fence and re-erecting it, and altering its character, is not repairing within the meaning of the Fencing Act, 1895. MCSAVENY *v.* SMITH, 24 N.Z.L.R. 245. [*New Zealand.*]

FIRE BRIGADES.

Contribution to Fire Brigades Board—Marine Insurance Company.—The words "in conjunction with any contract other than that of insurance" in sec. 2 of the Fire Brigades Act, 1890, mean in conjunction with a contract of a different character from that of insurance, *e.g.*, a contract for carriage. A company which insures ships or goods not intended to be stationary against the perils of the seas, including fire, is not a company insuring from fire property situated within the metropolitan district or any country district, within the meaning of sec. 42 of the Fire Brigades Act, 1890, although the policies of insurance on such ships or goods may for a short time cover the risk of fire within Victoria. *Held*, therefore, that such a company is not under that Act liable to contribute to the Fire Brigades Board. YORKSHIRE FIRE AND LIFE INSURANCE CO. *v.* BRITISH AND FOREIGN MARINE INSURANCE CO., 1905 V.L.R. 503; 27 A.L.T. 39; 11 A.L.R. 318. [*Victoria.*]

FISHERIES.

Oysters brought from Queensland.—Sec. 9 (*m*) of the Fisheries Act does not apply to oysters obtained outside the territorial limits of New South Wales. The sale of oysters which are unmarketable under Reg. 67, is therefore not an offence under Reg. 68, if the oysters are imported from Queensland. OLSEN *v.* PAXINO, 22 W.N. 199. [*New South Wales.*]

Appeal by special case.—OLSEN *v.* PAXINO, 22 W.N. 199. [*New South Wales.*]

FIXTURES.

See LANDLORD AND TENANT. REID *v.* SMITH, 1905 S.R. (Q.) 130; Q.W.N. 48. [*Queensland.*]

FRAUD.

Innocent misrepresentation.—If a person makes an innocent misrepresentation by which he induces another person to enter into an executory contract, and the former subsequently discovers the falsity of his representation, it is his duty to disclose his discovery to that other person; otherwise he will be liable in an action of deceit for damages afterwards sustained by that other person owing to the latter's continuing to act in reliance upon such misrepresentation. ROBERTSON *v.* BELSON, 1905 V.L.R. 555; 27 A.L.T. 48; 11 A.L.R. 299. [*Victoria.*]

Vendor and purchaser—False representation as to title.—*See* VENDOR AND PURCHASER. STEWART *v.* TAYLOR, 24 N.Z.L.R. 785; 7 Gaz. L.R. 455. [*New Zealand.*]

Constructive—Knowledge of law.—*See* NATIVE LANDS. R. *v.* PRICE, 24 N.Z.L.R. 291; 7 Gaz. L.R. 40. [*New Zealand.*]

Pleading.—*See* PLEADING. FALK *v.* LYSAGHT, BROS. & CO., LTD., 2 C.L.R. 421; 4 S.R. 665; 21 W.N. 219; 11 A.L.R. 149. [*New South Wales.*]

FRAUDS, STATUTE OF.

See CONTRACT.

FRAUDULENT CONVEYANCE.

Stat. 13 Eliz. c. 5—Fraud on creditors.—In order to avoid a sale for good consideration under 13 Eliz. c. 5, it must be shown that the purchaser had actual knowledge of a fraud

on the creditors. Mere knowledge of the existence of debts owing by the vendor does not put the purchaser upon an enquiry into the vendor's circumstances. COGHLAN *v.* ALEXANDER, 5 S.R. 441; 22 W.N. 128. [*New South Wales.*]

FRAUDULENT DEBTORS.

See ARREST, DISTRICT AND COUNTY COURTS—PRACTICE.

FRIENDLY SOCIETIES.

1899 No. 31, sec. 80—Misapplication of funds of society—Criminal or civil offence—Mens rea.—A person is not liable under sec. 80 (3) of the Friendly Societies Act, 1899, for misapplying the property of a society in the absence of *mens rea*. WALKER *v.* MITCHELL, 22 W.N. 41. [*New South Wales.*]

FUGITIVE OFFENDERS

Order for return—Warrant.—An order for return of a fugitive offender is good, though it be not proved that the offence alleged in the warrant is punishable by the law of the place where it was committed, though the authentication of the warrant as required by the Fugitive Offenders Act, 1881, is not proved and though it is not proved that the warrant was issued by a person having authority to issue the same. *In re* TRESSIDER, 7 N.Z. Gaz. L.R. 596. [*New Zealand.*]

GAMING & WAGERING.

Calcutta sweep.—A Calcutta sweep is a scheme by which prizes are gained by mode of chance within the meaning of sec. 37 of the Police Offences Act, 1890, and therefore the promoters of such a sweep are liable to conviction under that section. *Hall* v. *Cox* ([1899] 1 Q.B. 198), distinguished. ARTHUR *v.* HINES, 1905 V.L.R. 695; 27 A.L.T. 91; 11 A.L.R. 431. [*Victoria.*]

Game of chance—Lottery—Pak-a-pu.—If there is a scheme by which prizes of money are gained by a mode of chance, the case comes within sec. 18 of the Gaming and Lotteries Act, 1881, and it is immaterial out of what fund the prizes come, or whether the interests of those who take part in it are or are not conflicting. The words in sec. 18 of the Act which refer to a scheme for the distribution of prizes are little more than an amplification of the term "lottery" which occurs in the same section, and pak-a-pu is a lottery within the meaning of that section. The declaration in sec. 9 of the Act that pak-a-pu is a game of chance does not prevent it from being as well a lottery or a scheme under sec. 18 if it really comes within the language of sec. 18. *Joe Quick* v. *Cox* (21 N.Z.L.R. 584; 7 Gaz. L.R. 492), distinguished. LEE SUN *v.* CONOLLY, 24 N.Z.L.R. 553; 7 Gaz. L.R. 494. [*New Zealand.*]

Selling lottery ticket.—4 Geo. IV. c. 60; 5 Geo. IV. c. 83, not in force in New South Wales.—*See* STATUTES. QUAN YICK *v.* HINDS, 2 C.L.R. 345; 11 A.L.R. 223. [*New South Wales.*]

—— **Evidence of disposal.**—*See* EVIDENCE. O'DONNELL *v.* ING AH WING, 27 A.L.T. 113; 11 A.L.R. 480. [*Victoria.*]

Place—What is.—It is possible by habitual user to fix a spot in a public lane so as to be a "place" within the meaning of ss. 17 and 19 of 1902 No. 18. SHERWOOD *v.* PRIOR, 22 W.N. 191. [*New South Wales.*]

—— **Frequenting and using.**—A by-law of the city of Perth, framed under the Municipal Institutions Act, 1900, and gazetted November 27th, 1903, is as follows:—"Any person who shall frequent and use any street or other public place within the Municipality of Perth, either on behalf of himself or of any other person, for the purpose of bookmaking or betting, or wagering, or agreeing to bet or wager with any person, or paying or receiving or settling bets, shall be liable to a penalty not exceeding £20." The defendant was convicted and fined £10 and costs at the Perth Police Court, by the acting police magistrate, on a charge that he, on the 28th of May, 1904, did "frequent and use" Victoria Square, within the Municipality, for the purpose of betting with certain persons there. The magistrate, at the request of the defendant, stated a case under the Justices Act, 1902, and found the facts as follows: That on May 28th the respondent saw the appellant in Victoria Square; that appellant was writing in a book, and that respondent saw another man receive a sum of money, and that appellant gave a ticket; that on the appearance of the respondent the people who were there dispersed, and that the appellant put the book under his arm and ran, but was subsequently arrested by respondent for refusing his name and address; that a book and ticket, both of which were produced in evidence, were found on appellant when arrested; that the book contained the names of certain horses which ran in races at Belmont on May 28th; that Murray Street and Victoria Square are within the Municipality of Perth. The questions for the Court were, whether the magistrate, who had reserved his decision from June 14th to June 16th, and who had on the latter date, after the close of the case, and before delivering his decision, amended the complaint, substituting "Victoria Square" for "Murray Street"

as the locality of the offence, had power to make such amendment, and whether, in deciding that there was sufficient evidence of frequenting Victoria Square on the date alleged for the purpose of betting with persons there, the magistrate came to a correct decision in point of law. *Held*, that in order to prove "frequenting," evidence of visits of the defendant to the locality on previous days was admissible. *Held, also*, that on the evidence in this case the magistrate was justified in convicting the defendant of "frequenting for the purpose of betting." REIGER *v.* EVANS, 7 W.A.L.R. 107. [*Western Australia.*]

The defendant was convicted at the Perth Police Court by the acting police magistrate, under the same by-law as in *Reiger* v. *Evans* (*supra*), and fined, on a charge that he, on June 4th, 1904, did "frequent and use Murray Street, within the Municipality of Perth, for the purpose of betting with persons there." The magistrate, at the request of the defendant, stated a case under the Justices Act, 1902, and found the facts as follows:—That on June 4th, 1904, the appellant was at the corner of Murray and Pier Streets, Perth, and had a book in his hand; that he made a bet of six half-crowns to one against a horse called "Lockette," which it was proved was entered for a race called the Prince of Wales' Handicap, at Perth on that day, with a man named William Rushton; that appellant was seen in Murray Street three times on June 4th, 1904, between 12.30 and 1 p.m.; that Murray Street is within the Municipality of Perth. The question for the Court was whether the magistrate, in deciding on the above facts that there was evidence of "frequenting," was right in point of law. *Held*, that on the evidence in this case the magistrate was not justified in convicting the defendant of "frequenting for the purpose of betting." WISE *v.* DAVEY, 7 W.A.L.R. 109. [*Western Australia.*]

—— **Common betting house.**—The defendant was proceeded against at the Perth Police Court under sec. 209 of the Criminal Code, for that he used a common betting house. Evidence was given by two constables that they had made bets with the defendant and had seen him making bets in the passage leading to the stairs of a club. Defendant was convicted by the justice and fined. On the application of the defendant the police magistrate stated a special case under sec. 197 of the Justices Act, 1902. The question for the opinion of the Court being whether the police magistrate was right in holding that the passage was a common betting house within the meaning of sec. 209 of the Criminal Code. *Held*, that the passage was a place used "for the purpose of bets being made therein between persons resorting to the place," and was, therefore, a common betting house within the meaning of the said section. R. *v.* GUTMANN, 7 W.A.L.R. 35. [*Western Australia.*]

A house kept for playing pak-a-pu is not a common gaming-house within the meaning of secs. 5 to 7 of the Gaming and Lotteries Act, 1881. The fact that instruments for playing pak-a-pu are found in a house is not evidence sufficient to support a conviction under sec. 10 of the statute, though the finding of other instruments of gaming is evidence under sec. 7, referring to common gaming-houses. The offence under sec. 10 is a different offence, punishable in a different way. "Assisting to conduct" a gaming-house is not within the words of sec. 4 of the statute, and if it is an offence it must be proved that the accused person did some "act in conducting," and that some person was "conducting" a gaming-house. An essential ingredient of the offence charged must not be omitted from the information and conviction, and where the words "without lawful excuse" were omitted, *held*, that the conviction could not be sustained. QUICK *v.* COX, 21 N.Z.L.R. 584; 7 Gaz. L.R. 492. [*New Zealand.*]

Games, Wagers and Betting Houses Act (1902 No. 18), sec. 19—Being found in betting house—Assisting—Criminal law—Autrefois convict—Second conviction on same facts.—The applicant was charged under sec. 19 (2) of 1902 No. 18 with being found in a betting house and convicted, the evidence showing that he was not only there, but was assisting the keeper thereof. He was then charged under sec. 19 (1) with assisting the keeper and, the depositions in the former case being put in by consent as the evidence in the case, was convicted. *Held*, that he had not been convicted a second time upon the same facts within the meaning of the maxim *nemo debet bis puniri pro uno delicto*, since though the same evidence was given in each case, the facts necessary and material to the proof of each charge were distinct. *Ex parte* SPENCER; SHERWOOD *v.* SPENCER, 2 C.L.R. 250; 5 S.R. 150; 22 W.N. 40. [*New South Wales.*]

Money deposited with stakeholder.—By the Police Court Act Amendment Act (No. 1), sec. 12, it is enacted that "No action or suit shall be brought or maintained in any Court of Law or Equity for recovering any sum of money or valuable thing . . . which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made." An action having been brought in the local Court of Perth to recover £26 8s. 6d., for goods sold and delivered, the defendant paid into Court £6 8s. 6d. and proportionate costs, and counterclaimed £20, the amount deposited by the defendant with the plaintiff as stakeholder to abide the event of a wager between the parties. The magistrate gave judgment for the plaintiff on the claim in full, and on the counterclaim in full, and found as a fact that notice had been given to the stakeholder not to pay the amount of the bet to himself when the dispute arose as to who had won, and that the bet was in favour of the defendant according to the evidence. *Held*, that in order to maintain an action to recover back, as money had and

received to the use of the depositor, money deposited with a stakeholder, the depositor must have given notice before appropriation or payment over that he had abandoned the wagering contract and was no longer bound by it, and that it is not sufficient merely to have given the stakeholder notice not to pay or appropriate, or that he (the depositor) claims the money. *Held, also*, that in this case the magistrate was wrong in finding as he did on the question of notice, there being no evidence to support such finding. BECHTELL *v.* NICHOLLS, 7 W.A.L.R. 83. [*Western Australia.*]

On licensed premises.—*See* LICENSING.

GARNISHEE.

Money paid by order on Savings Bank.—The garnishee had deposited in her own name in the Savings Bank money belonging to the judgment debtor. In discharge of her liability the garnishee had, before service of the garnishee order *nisi* given the judgment debtor an order for payment on the bank in the usual form and had given therewith the pass book. The garnishee took no steps after service of the garnishee to stop payment of the money order, which was not cashed till after service of the garnishee order. *Held*, that the money order was to all intents and purposes a cheque, and therefore the moneys could not be attached as a debt from the garnishee to the judgment debtor. MONTGOMERY'S BREWERY CO. *v.* MCKENZIE, 26 A.L.T. Supp. 1. [*Victoria.*]

Debt due from Commissioner for Railways.—Moneys due to the judgment debtor under a contract with the Commissioner for Railways are debts due from the Crown, and as such are not liable to be reached by a garnishee order. DREW *v.* MIDDLETON, 1905 Q.W.N. 3. [*Queensland.*]

GIFT.

Of calls on shares.—Payment by a husband of calls upon shares to which his wife became entitled under their marriage settlement. *Held*, upon the whole of the circumstances, to amount to a gift by the husband to the wife, so that the sums paid were not recoverable from the wife by the husband's executors, although by the terms of the marriage settlement sums so paid were to be recoverable, and what had taken place did not amount to a legal release of the liability to repay. *In re* JOSEPH, 24 N.Z.L.R. 645; 7 Gaz. L.R. 354. [*New Zealand.*]

Failure of object of subscription—Resulting trust.—*See* TRUST AND TRUSTEE. LUKE *v.* WAITE, 2 C.L.R. 252; 11 A.L.R. 107. [*Victoria.*]

GOLDFIELDS WATER SUPPLY.

See MINING. MCNULTY *v.* CARROLL, 7 W.A.L.R. 187. [*Western Australia.*]

GOODWILL.

Rights of vendors and purchasers.—The rights of vendors and purchasers of goodwill discussed. OWEN *v.* RAYNER, 8 N.Z. Gaz. L.R. 64. [*New Zealand.*]

Dentist's business.—A dentist's business depends for its existence on the personal qualities of the person carrying it on, and has nothing in connection with it than can be called goodwill, or which is analogous to goodwill so as to be the subject of valuation. OWEN *v.* RAYNER, 8 N.Z. Gaz. L.R. 64. [*New Zealand.*]

Of partnership.—*See* PARTNERSHIP. BELL *v.* CULLING, 24 N.Z.L.R. 501; 7 Gaz. L.R. 165; OWEN *v.* RAYNER, 8 N.Z. Gaz. L.R. 64. [*New Zealand.*]

Duty on.—*See* STAMP DUTIES. *In the estate of* JOSEPH, 7 N.Z. Gaz. L.R. 643. [*New Zealand.*]

GOVERNMENT.

See CROWN.

GOVERNOR.

See CROWN.

HABITUAL CRIMINALS ACT.

See CRIMINAL LAW.

HEALTH.

See PUBLIC HEALTH.

HIGHWAY.

See ROAD.

HIGHWAYS & WATER COURSES.

See WATER.

HOSPITALS & CHARITABLE INSTITUTIONS ACT.

Contribution—Action of debt—Amount—Exhausting remedies against patients.—Sec. 74 of the Hospitals and Charitable Institutions Act, 1885, provides that, if an institution under that Act affords relief to any person coming from beyond the contributing districts in which such institution is situated, it shall be lawful for the trustees or the Board having the control of the institutions affording relief to recover from the Board of the district from which such person came the entire cost of such relief, subject to a condition set out in the section. *Held*, that the Board of one institution can sue the Board of another institution, under this section, as for debt. The class of cases, such as *Addison* v. *The Mayor, &c., of Preston* (21 L.J.C.P. 146); *R.* v. *Keilor District Road Board* (1 V.R. (L) 14); and *R.* v. *The Mayor, &c., of Dunedin* (N.Z.L.R. 1 S.C. 321), in which the remedy for the recovery of salary due to an officer of a public body is by mandamus to the public body to pay, distinguished. A claim under sec. 74 is not limited to a claim for the payment of the cost of relief afforded during one year out of the annual fund of the defendant Board. *Semble*, that it is not necessary for a Board proceeding against another Board under sec. 74 to prove that it has first exhausted its remedies against the individual patients under sec. 71. THE WAIRAU HOSPITAL AND CHARITABLE AID BOARD *v.* THE PICTON HOSPITAL AND CHARITABLE AID BOARD, 24 N.Z.L.R. 45. [*New Zealand.*]

HUSBAND AND WIFE.

Restraint on anticipation—Insolvency.—Where a married woman entitled to separate estate with a restraint on anticipation becomes insolvent, that separate estate by virtue of sec. 119 of the insolvency Act 1897, vests in her trustee in insolvency, and as against him the restraint on anticipation is inoperative notwithstanding sec. 22 of the Married Women's Property Act, 1890. *In re* FORSTER, 27 A.L.T. 129; 11 A.L.R. 500. [*Victoria.*]

Restraint on anticipation.—The question whether a clause restraining anticipation is to apply not only to the income, but also to the capital, depends upon the intention of the testator expressed in the will. Upon the construction of the will, *held*, that certain married women were entitled to be paid the capital of their interests in a legacy and in a share of residue. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

Restraint on anticipation—Waiver — Estoppel—Accord and satisfaction.—The respondent, as trustee of a chose in action vested in him by an order of the Supreme Court, brought an action to recover from the appellant arrears alleged to be due under a covenant in a deed of separation by which the appellant covenanted to pay to a trustee a certain sum per annum by quarterly instalments, upon trust for his wife for her separate use without power of anticipation. The appellant pleaded *inter alia* an equitable plea alleging that by a clause of the deed it was provided that under certain circumstances, upon the performance by the appellant of certain conditions as to giving notice, the deed should be considered as at an end and its covenants void. The plea alleged further that the circumstances contemplated in the said clause had arisen, that the wife had waived the performance of the condition as to notice, and that the deed was therefore at an end and its covenants void; and that the appellant, before any of the moneys claimed became due, ceased to pay the sum covenanted to be paid, and paid other sums to the wife and entered into other arrangements with her from time to time, and that these moneys were so paid and arrangements entered into by the appellants on the faith and understanding that the arrangement in the deed was at an end and the covenants void, and his wife accepted these moneys and entered into these arrangements on the same faith and understanding, and by her conduct both she and the respondent were estopped from setting up and suing upon the deed. Issue was joined upon the pleas. It appeared at the trial that at the date of the alleged notice, one quarterly instalment was due and unpaid. The jury found specially that the wife had waived the performance of the conditions as to notice, and also that she accepted the moneys paid and the other arrangements made after the date of the waiver, as alleged in the plea. *Held*, that the plea must be construed not as merely setting up a waiver by the wife of the condition as to notice, but as further alleging that on each occasion when a payment was made under the substituted arrangement, the wife accepted the payment and the fresh arrangement as a satisfaction of all instalments then due, and agreed not to insist upon the stipulation as to notice or to set up the deed as creating a subsisting obligation; and that, inasmuch as a restraint on anticipation imposes no restriction upon a wife with respect to income actually accrued due, the plea disclosed a good defence in Equity as to all the instalments sued for except the first; and that, upon the finding of the jury, the defence had been substantially proved. *Hood Barrs* v. *Heriot* ([1896] A.C. 174), followed. *Semble*, that but for the equitable nature of the interests involved, this would also have been a good defence at common law

by way of accord and satisfaction. An executory contract to which a married woman is a party, and which does not amount to a complete gift of property is not made irrevocable by the mere fact that it contains a clause in restraint of anticipation with regard to her rights under the contract. *Semble*, therefore, that in a separation deed by which no property is assigned such a clause would not prevent the wife from rescinding or releasing the deed, or waiving her rights under it. Decision of the Supreme Court, *McNaghten* v. *Paterson* ([1905] 5.S.R. (N.S.W.) 90), reversed, and judgment of Darley C.J. restored. PATERSON *v.* MCNAGHTEN, 2 C.L.R. 615; 11 A.L.R. 263; 5 S.R. 90; 22 W.N. 25. [*New South Wales.*]

Separate property—Money in Savings Bank—Onus of proof.—*See* BANKRUPTCY AND INSOLVENCY. JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

Insurance by husband.—*See* INSURANCE. MUTUAL LIFE INSURANCE CO. *v.* PECHOTSCH, 2 C.L.R. 823; 11 A.L.R. 467; 5 S.R. 252; 22 W.N. 103. [*New South Wales.*]

Crown lands—Purchase by wife.—*See* CROWN LANDS. HALL *v.* COSTELLO, 22 W.N. 186; 15 L.C.C. 149. [*New South Wales.*]

Will of married woman.—*See* WILL. *In re* ROEMERMANN, 1905 Q.W.N. 8. [*Queensland.*]

Partnership—Husband agent for wife.—Partnership is a personal relationship, and where a husband is nominally a partner with another person, but in reality merely an agent for his wife in such partnership, this does not constitute the wife a partner and disentitle her to claim against the partnership assets. However, under such circumstances it was *held* that the husband was entitled to an indemnity from his wife against all partnership losses and debts, and that the benefit of such indemnity passed on bankruptcy to the Official Assignee. *In re* WILTSHIRE AND SCOTT; *Ex parte* SCOTT, 24 N.Z.L.R. 354; 7 Gaz. L.R. 378. [*New Zealand.*]

Agency of wife—Notice to vaccinate.—*See* PUBLIC HEALTH. THOMPSON *v.* KING, 1905 V.L.R. 375; 11 A.L.R. (C.N.) 61. [*Victoria.*]

Married woman—Next friend.—A married woman cannot act as the next friend of an infant for the purposes of an action. SALTON *v.* ELLERKER, 26 A.L.T. Supp. 1. [*Victoria.*]

Separation deed—Inconsistent clauses—Custody of children—Right of access.—A deed of separation provided that the wife should have the sole care and control of the children, who were to be permitted to reside under the mother's care in such places and to be educated for such profession or occupation as she should determine. Another clause provided that the father should have access to the children if he should so desire once a month at some convenient place in or near Sydney. *Held*, that the father's right of access was subordinate to the mother's absolute discretion as to the management and education of the children, and that if she acted reasonably the mother was at liberty to send a child to reside, for the purpose of his education, at a place distant from Sydney. MACROW *v.* MACROW, 5 S.R. 432; 22 W.N. 134. [*New South Wales.*]

Separation deed—Payments under—Proof in bankruptcy.—*In re* BECK, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104. [*New Zealand.*]

Coercion.—Evidence of.—*See* CRIMINAL LAW. R. *v.* JACKSON, 4 S.R. 732; 21 W.N. 241. [*New South Wales.*]

IMMIGRATION RESTRICTION ACT.

See FEDERAL LAW.

IMPOUNDING.

Selling without impounding.—*See* CATTLE TRESPASS. BRYDON *v.* MURRAY, 7 W.A.L.R. 186. [*Western Australia.*]

Crown bailiff.—Land Act, 1901. *See* DIBBIN *v.* LAWLER, 11 A.L.R. (C.N.) 31. [*Victoria.*]

Rescue.—Evidence that animals rescued were being driven to the pound. DECKER *v.* CHAMBERS, 11 A.L.R. (C.N.) 26. [*Victoria.*]

Title to land in question.—*See* JUSTICES. CROWLEY *v.* ANDRESEN, 7 N.Z. Gaz. L.R. 453. [*New Zealand.*]

IMPRISONMENT FOR DEBT.

See ARREST.

INCLOSED LANDS PROTECTION.

See TRESPASS.

INCOME TAX.

See TAXATION.

INDECENT PUBLICATIONS.

See OBSCENE PUBLICATIONS.

INDUSTRIAL ARBITRATION.

JURISDICTION—Industrial agreement — Common rule.—The Court of Arbitration has no jurisdiction to entertain an application by the parties to an industrial agreement, which has not been made an award of the Court, to have the terms of the agreement declared a common rule. The power to declare a common rule, conferred upon the Court by sec. 37 of the Industrial Arbitration Act, can be exercised only with a view to the enforcement of an award, order, or direction. It is, therefore, a condition precedent to the exercise of that power, that there should be in existence an award, order, or direction, made by the Court in pursuance of a hearing or determination, upon a reference within the meaning of sec. 26, sub-secs. (a) and (b). An agreement was made between an association of employers and two unions of employees, fixing the conditions of employment for two years from the date of the agreement, and on the same day another agreement was made between the same parties, providing that the former agreement should not come into force or be binding upon the parties to it, unless it should be made a common rule. Both agreements were in writing, and were registered with the Registrar of the Court, as provided by sec. 13 of the Act. The parties then filed in the Arbitration Court, and advertised a notice of, an application to have the terms of the agreement declared to be a common rule. This was the ordinary method of initiating proceedings in that Court for that purpose. *Held*, that the Court of Arbitration had no jurisdiction to entertain the application, and that immediately after the notice any person might apply to the Supreme Court for a writ of prohibition, to restrain the Court of Arbitration from further proceeding. *Held*, further, that the original agreement, not being enforceable against anyone, was not a subsisting industrial agreement within the meaning of sec. 15. Decision of the Supreme Court ([1904] 4 S.R. (N.S.W.) 384), reversed. MASTER RETAILERS ASSOCIATION OF N.S.W. *v.* SHOPS ASSISTANTS' UNION OF N.S.W. AND OTHERS, 2 C.L.R. 94; 11 A.L.R. 167; 1905 A.R. 174. [*New South Wales.*]

—— **Industrial agreement—Varying.**—The Court has no power to either annul or vary an industrial agreement. *Ex parte* PETCHELL, 1905 A.R. 13. [*New South Wales.*]

—— **Dispute not duly referred.**—The Arbitration Court has no power to make an award in an industrial dispute unless such dispute has been duly referred in pursuance of the Act. An award *held* bad where the Industrial dispute had not been referred in pursuance of a resolution passed by the majority of the members of the union, as required by sec. 28. *Ex parte* HERMANSON, 22 W.N. 208. [*New South Wales.*]

—— **Preference to unionists.**—Sec. 36 sub-sec. (b) of the Industrial Arbitration Act (N.S.W.) 1901, provides, *inter alia*, that the Court of Arbitration, in its award or by order made on the application of any party to the proceedings before it, may "direct that as between members of an industrial union of employees and other persons offering their labour at the same time, such members shall be employed in preference to such other persons, other things being equal." The Court of Arbitration, in an industrial dispute between the appellant and respondent unions, made an award by which preference was ordered to be given to members of the appellant union on compliance with certain conditions as to the admission of members, and embodied in the order for preference a direction that any member of the respondent union requiring labour should, whenever reasonably practicable having regard to existing exigencies, notify the secretary of the appellant union of the labour required. *Held*, that the Court had no jurisdiction to make the direction as to notice. Decision of the Supreme Court, *Ex parte The Master Carriers' Association of N.S.W.* ([1905] 5 S.R. (N.S.W.) 77), affirmed. TROLLY, DRAYMEN AND CARTERS' UNION OF SYDNEY AND SUBURBS *v.* MASTER CARRIERS' ASSOCIATION OF N.S.W., 2 C.L.R. 509; 5 S.R. 77; 22 W.N. 27. [*New South Wales.*]

—— **No existing relationship of employer and employee.**—The Newcastle Coal Trimmers' Union, who worked as casual labourers from hour to hour for anyone offering employment, with the right to cease work at any time on giving one hour's notice, demanded of the respondents a wage of three shillings per hour for any work required to be done on a certain holiday, and being refused, such of the men as were then employed gave the requisite notice and ceased work, and the remainder refused to accept employment. The respondents thereupon applied *ex parte* to the Arbitration Court and obtained an order that the men should resume work pending the determination of the dispute, under a penalty. *Held*, that there was no industrial dispute between the parties, since there was no existing relationship of employer and employee, and that the Arbitration Court had no jurisdiction to order the men to resume work.

Held, further, that the Court had no jurisdiction to make the order *ex parte*. *Ex parte* EIFFE; NEWCASTLE STEVEDORING COMPANY, RESPONDENTS, 5 S.R. 118; 22 W.N. 14; 1905 A.R. 197. [*New South Wales.*]

An industrial dispute was referred to the Arbitration Court by the respondent union, the matter in dispute being the wages and conditions of labour at the applicant's colliery. Pending the hearing of the dispute the men employed in the colliery ceased work and terminated the employment, and the mine was subsequently worked by non-union labour. *Held*, that the relationship of employer and employee having ceased to exist the jurisdiction of the Arbitration Court to hear the dispute also ceased. *Held, further*, that the respondent union had no power to continue the industrial dispute when those of its members who were actually interested in the matters involved therein had terminated their contracts with the employer. *Ex parte* BROWN; THE COLLIERY EMPLOYEES' FEDERATION, RESPONDENTS, 5 S.R. 412; 22 W.N. 122. [*New South Wales.*]

The Court has jurisdiction to enforce a penalty for breach of union rules, independent of the existence of the relationship of employer and employee. *In re* YOUNG, 1905 A.R. 202. [*New South Wales.*]

AWARD—What is.—In drawing up orders or awards of the Court, the term "award" should only be used when the Court itself makes an award in a dispute; that is, where the Court independently lays down the conditions to regulate the industry. *Ex parte* PETCHELL, 1905 A.R. 13. [*New South Wales.*]

—— **Material grievance.**—Where the proceedings were in form against the respondents, but the object of the application was to get an award made a common rule, the Court declined to dismiss the claim on the ground that there was no material grievance to remedy. UNITED FURNITURE TRADE *v.* HORDERN, 1905 A.R. 125. [*New South Wales.*]

—— **Preference to unionists.**—Where an industrial union fairly and substantially represents the industry so far as the employees are concerned, and there are no countervailing reasons, the policy of the Act requires that preference should be given to unionists. TROLLY, DRAYMEN AND CARTERS' UNION *v.* MASTER CARRIERS' ASSOCIATION, 1905 A.R. 38. [*New South Wales.*]

Jurisdiction to grant. *See Jurisdiction, col.* 143.

—— **Person subject to—Person not in trade.**—Where a person who is not engaged in, or connected with, a trade, engages laborers to do work in that trade, he does not thereby subject himself to the provisions of an existing award in reference to that trade; as for instance, where a draper employed tradesmen to erect a building for his own use, he was not engaged in or connected with the building trade, and did not become subject to an award affecting builders and contractors. BRETT *v.* HANNAN, 7 N.Z. Gaz. L.R. 101. *New Zealand.*]

—— **Union since defunct.**—Under s. 86 of the Industrial Conciliation and Arbitration Act, 1900, an award made by the Arbitration Court as the result of proceedings taken by a union of workers which has since become defunct remains in force until the registration of the union is cancelled by the Registrar under s. 20 of the Industrial Conciliation and Arbitration Act, 1901 INSPECTOR OF FACTORIES *v.* THOMPSON, 8 N.Z. Gaz. L.R. 94. [*New Zealand.*]

—— **Employer.**—Who is. *See In re* PATENT ASPHALTUM CO., 1905 A.R. 186. [*New South Wales.*]

—— **Employer and employee—Lease of Brickcarts.**—*In re* SPEARE, 1905 A.R. 239. [*New South Wales.*]

—— **Railway Commissioners.**—The Arbitration Court has power to deal with the Railway Commissioners in respect of the various matters included in the expression "industrial matters" in the Act. *In re* THE PAINTERS' AWARD, 1905 A.R. 33. [*New South Wales.*]

—— **Wharf labour—Deep sea rates.**—*In re* A.U.S.N. Co., 1905 A.R. 193. [*New South Wales.*]

—— **Wharf labour—Interstate rates.**—*In re* CENTRAL WHARF STEVEDORING CO., 1905 A.R. 191. [*New South Wales.*]

—— **Supplemental award—Enquiry whether the main award was properly made.**—An award was made dealing with the conditions applicable to town bakers in the Northern Industrial District, and by consent the matter stood over to settle by separate order or supplemental award the conditions applicable to country bakers. An order was drawn up, which was to operate in and around the city of Auckland, and power was reserved to the Court to make such supplemental orders or awards binding other parties within the said district as might appear just. On the parties coming before the Court on the final hearing of the case the country bakers asked the Court to ascertain whether the conditions prescribed by s. 98 of the Industrial Conciliation and Arbitration Act, 1900, had been complied with. *Held*, that the application before the Court was not for an award in the full sense of the term, but for a supplemental order or award under the reservation, and that the Court could not in view of sec. 106 of the Act make the enquiry asked for. *In re* AUCKLAND BAKERS' UNION, 7 N.Z. Gaz. L.R. 594. [*New Zealand.*]

—— **Award where respondent's contentions upheld.**—Even if the Court upholds all the

contentions of the respondent, it is bound in order to avoid disputes in the future to lay down conditions which will regulate the relations between the employer and his workmen. MARBLE AND SLATE WORKERS' UNION *v.* ANTHONY HORDERN, 1905 A.R. 219. [*New South Wales.*]

—— **Interpretation—Review.**—In an action in a Court of law for wages claimed under an award of the Court of Arbitration, a Court of law will use the award and will interpret it so far as may be necessary to discover the wages payable. But where the Court of Arbitration itself has interpreted the award, a Court of law has no jurisdiction to review such interpretation. PEACHY *v.* HOLMES BROS., 7 W.A.L.R. 89. [*Western Australia.*]

—— **Common rule—Industrial agreement.**—The Court will not proceed with the interpretation of a common rule which it had no jurisdiction to make. *Re* WOOL AND BASIL WORKERS' AGREEMENT, 1905 A.R. 157. [*New South Wales.*]

—— **Breach—Dismissal of an employee—Motives.**—To bring an employer within the provisions of sec. 6 of the Industrial Conciliation and Arbitration Act Amendment Act, 1903, he must have dismissed a worker from his employment solely for the reasons mentioned in that section. That section was framed to deal with dismissal motiveless except for the reasons stated therein. INSPECTOR OF AWARDS *v.* KELLOW, 7 N.Z. Gaz. L.R. 323. [*New Zealand.*]

—— **Inspection of books.**—An award entitling a single person to inspect books is not broken by a refusal to permit inspection by more than one. *In re* LYON, 1905 A.R. 207. [*New South Wales.*]

—— **Enforcement of award—Enquiry into validity of award.**—Upon an application for the enforcement of an award the Court will not enquire whether prior to the reference of the dispute for settlement the confirmatory ballot required by sec. 98 (1) of the Industrial Conciliation and Arbitration Act, 1900, was properly taken. AUCKLAND CARPENTERS' UNION *v.* BENNETT & Co., 7 N.Z. Gaz. L.R. 594. *See In re* MARKS *v.* AUCKLAND BUTCHERS' UNION, 7 N.Z. Gaz. L.R. 592. [*New Zealand.*]

—— **Enforcing penalties.**—The president has jurisdiction to enforce a penalty for disobedience to the rules of a union independently of the existence of the relationship of employer and employee. *In re* YOUNG, 1905 A.R. 202. [*New South Wales.*]

—— **Injunction.**—An injunction to restrain breaches of award will only be granted under extraordinary circumstances where an irreparable injury would otherwise be done. *In re* SPEARE, 1905 A.R. 239. [*New South Wales.*]

UNIONS — Reference — Resolution. — To comply with the provisions of s. 98 (1) of the Industrial Conciliation and Arbitration Act, 1900, there must be a special meeting of the union and a resolution passed thereat, and a confirmation of the resolution by ballot of all the members taken after the resolution has been passed. Unless the provisions of the section are complied with, the Court will decline jurisdiction. *In re* MARKS *v.* AUCKLAND BUTCHERS' UNION, 7 N.Z. Gaz. L.R. 592. *See* AUCKLAND CARPENTERS' UNION *v.* BENNETT & Co., 7 N.Z. Gaz. L.R. 594. [*New Zealand.*]

—— **Conduct detrimental to trades unionism.**—*Quære* as to the effect of a rule providing for a penalty for acting in opposition to the principles of trades unionism. *Re* YOUNG, 1905 A.R. 202. [*New South Wales.*]

—— **Expulsion of member of union.**—*Quære* whether a rule under which a member may be expelled immediately is valid. *Re* YOUNG, 1905 A.R. 202. [*New South Wales.*]

—— **Union rule—Reasonableness.**—A rule of a union providing that a member may in certain cases be fined is unreasonable unless a maximum is stated. *Re* YOUNG, 1905 A.R. 202. [*New South Wales.*]

—— **Preference to unionists.**—*See Jurisdiction, col.* 143; *Award, col.* 145; *Practice, col.* 148.

PARTIES—Foreign shipping company.—A foreign company trading to New Zealand which had taken steps under the Companies Acts, to enable it to trade to New Zealand, was *held* to have been rightly made a party to an award. *In re* WELLINGTON COOKS' AWARD, 7 N.Z. Gaz. L.R. 109. [*New Zealand.*]

PRACTICE—Summons for non-preference.—In issuing a summons for breach of condition for preference to unionists, the name of the unionist to whom it was said preference was not given should be stated, in order to enable the respondents to prepare their case. *In re* HORNE, 1905 A.R. 162. [*New South Wales.*]

—— **Summons for penalty—Sufficiency of affidavit.**—*In re* GRACE BROTHERS, 1905 A.R. 278. [*New South Wales.*]

—— **Summons—Return day.**—After the return day the Court has no jurisdiction to deal with a summons which was neither heard or adjourned on that day. *In re* AGNEW, 1905 A.R. 237. [*New South Wales.*]

In a special case if an affidavit of urgency is filed the Court will accelerate the hearing of a summons by granting an early return day. *In re* SPEARE, 1905 A.R. 239. [*New South Wales.*]

—— **Extension of award—Notice—Service.**—*In re* SADDLERS' AWARD, 1905 A.R. 272. [*New South Wales.*]

—— **Common rule—Notice of objections.**—*In re* SADDLERS' AWARD, 1905 A.R. 272. [*New South Wales.*]

—— **Rules of union—Evidence.**—The Court only looks to the records of the Industrial Arbitration office to see what are the rules of an industrial union. *In re* HORNE, 1905 A.R. 162. [*New South Wales.*]

—— **Misnomer—Amendment.**—The Arbitration Court will not be embarassed by an error in the naming of a party either in an award or in an application to enforce it, and will, if necessary, amend. FERGUSON *v.* MCGREGOR S.S.Co., 7 N.Z.Gaz.L.R.596. [*New Zealand.*]

—— **Res judicata—Withdrawal of summons.**—Withdrawal of summons *held* not to estop applicants from taking out fresh summons. *In re* A.U.S.N., 1905 A.R. 193. [*New South Wales.*]

INFANT.

Maintenance—Reversionary interest.—In a proper case the Court will charge reversionary property of infants with money required for their past maintenance, even though some of the infants for whose benefit the money is raised may not ultimately become entitled in possession to the property charged. *De Witte* v. *Palin* (L.R. 14 Eq. 251), followed. *In re Hamilton* (31 Ch. D. 291); and *Cadman* v. *Cadman* (33 Ch. D. 397), distinguished. TOGNETTI *v.* TOGNETTI, 22 W.N. 212. [*New South Wales.*]

Maintenance order—New circumstances.—Where an order for future maintenance has been made for a time certain, or until further order, the Court should be promptly informed of any circumstance arising which might tend to lead the Court to vary or rescind the order. *In the estate of* PUMPA, 5 S.R. 379; 22 W.N. 157. [*New South Wales.*]

Settled land—Tenant for life—Appointment of person to exercise powers for infant.—*See* SETTLED LAND. *In re* NGAWAKAAKUPE, 7 N.Z. Gaz. L.R. 450. [*New Zealand.*]

Lease of land by guardian.—*See* SETTLED LAND. *In re* RATHBONE, 8 N.Z. Gaz. L.R. 1. [*New Zealand.*]

Guardian—Appointment by person adversely interested.—A widow should not appoint a guardian to protect the children's interest where she is adversely interested. *Re* WARREN AND WARREN, 7 N.Z. Gaz. L.R. 122. [*New Zealand.*]

Next friend—Married woman.—*See* HUSBAND AND WIFE. SALTON *v.* ELLERKER, 26 A.L.T. Supp. 1. [*Victoria.*]

Legacy to.—*See* EXECUTOR AND ADMINISTRATOR. *Re* SMITH, 22 W.N. 4. [*New South Wales.*]

As cestuis que trustent.—*See* TRUST AND TRUSTEE.

Conversion of realty—Election to take unconverted.—*See* CONVERSION. *In re* POPLIN; POPLIN *v.* POPLIN, 5 S.R. 348; 22 W.N. 97. [*New South Wales.*]

Domicile.—*See* DIVORCE. ROBERTSON *v.* ROBERTSON, 1905 V.L.R. 546; 27 A.L.T. 48; 11 A.L.R. 304. [*Victoria.*]

Marriage—Consent of parent.—*See* MARRIAGE. *Re* A.B., 7 N.Z. Gaz. L.R. 575. [*New Zealand.*]

Costs of appeal.—*See* COSTS. HOLDEN *v.* BLACK, 2 C.L.R. 768; 1905 V.L.R. 326; 26 A.L.T. 205; 11 A.L.R. 200, 393. [*Victoria.*]

Children's Protection. — *See* CHILDREN'S PROTECTION.

Infants' Protection.—*See* DESERTED WIVES AND CHILDREN.

INFANTS PROTECTION.

See DESERTED WIVES AND CHILDREN.

INJUNCTION.

Partnership—Counterclaim.—The defendants, alleging that they were partners with the plaintiff in the business carried on under his name, seized a quantity of goods in the plaintiff's store, and removed them to other premises. They then gave written notice to the plaintiff of their claims to be considered as partners with him. The plaintiff appealed to the Court for an injunction to restrain the defendants from disposing of the goods they had seized, &c. The defendants, in their statement of defence, did not set up any exclusive ownership of the goods seized, but claimed that they were partnership property in the business carried on by the plaintiff. The defendants also filed a counterclaim, in which they prayed a declaration of the alleged partnership, and also for accounts to be taken, etc. *Held*, that the plaintiff was entitled to a writ of injunction, as the title to the goods was not *bona fide* in dispute, but that, in view of the future litigation of the question of partnership, he should dispose of them, in the meantime, only in the ordinary way of business, under conditions imposed by the Court. *Held, also*, that under rules 451 to 465 of the Code, the setting up of a counterclaim by the defendants in the present proceedings was

irregular. EDMONDS *v.* EDMONDS, 24 N.Z. L.R. 440. [*New Zealand.*]

Technical breach of trust.—Injunction to restrain performance of an agreement which constituted a technical breach of trust refused where the agreement was made *bona fide* in the interests of the trust. ATTORNEY-GENERAL *v.* DOWN, 1905 S.R. (Q.) 16; Q.W.N. 9. *But see* DOWN *v.* ATTORNEY-GENERAL OF QUEENSLAND, 2 C.L.R. 639; 11 A.L.R. 288. [*Queensland.*]

Agreement sanctioned by Governor-in-Council.—*Quære*, whether an injunction can be granted to restrain the performance of an agreement sanctioned by the Governor-in-Council. ATTORNEY-GENERAL *v.* DOWN, 1905 S.R. (Q) 16; Q.W.N. 9. *But see* DOWN *v.* THE ATTORNEY-GENERAL OF QUEENSLAND, 2 C.L.R. 639; 11 A.L.R. 288. [*Queensland.*]

To restrain breach of statute.—*See* STATUTE. ATTORNEY-GENERAL *v.* MAYOR, ETC., OF THE CITY OF MELBOURNE, 27 A.L.T. 116; 11 A.L.R. 504. [*Victoria.*]

To restrain breach of covenant by administrator.—*See* HOLDEN *v.* BLACK, 2 C.L.R. 768; 1905 V.L.R. 326; 26 A.L.T. 205; 11 A.L.R. 200, 393. [*Victoria.*]

Mandatory injunction—Overhanging pipes.—Where the owner of property in carrying out sewerage works pursuant to a plan drawn by officers of the Melbourne and Metropolitan Board of Works erects ventilating pipes on the exterior of one of the walls of his premises in such a way as to overhang his neighbour's land, he is liable for trespass; and the Court will grant a mandatory injunction compelling him to remove them. LAWLOR *v.* JOHNSTON, 1905 V.L.R. 714. [*Victoria.*]

Right of plaintiff to abate nuisance.—The injured person, though he may abate a nuisance is under no obligation to do so, and the existence of such a right will not disentitle him to have an injunction issued compelling the wrongdoer to remove the nuisance. LAWLOR *v.* JOHNSTON, 1905 V.L.R. 714. [*Victoria.*]

Delay.—Delay on the part of the injured person in bringing his action is no answer to his claim when at the time the work was being carried out the trespasser knew that he was committing a wrong. LAWLOR *v.* JOHNSTON, 1905 V.L.R. 714. [*Victoria.*]

Damages in lieu of.—The Supreme Court of New Zealand has as full power to award damages either in addition to or in substitution for an injunction, as the Court of Chancery in England possessed under Lord Cairns' Act. RYDER *v.* HALL, 7 N.Z. Gaz. L.R. 442. [*New Zealand.*]

INSTRUMENTS ACT.

See JUDGMENT.

INSURANCE.

Life insurance—Policy in favour of wife and children—Right of insured to surrender value.—By the statute No. 49 of 1902 (N.S.W.) life policies effected by a man on his own life, and expressed to be for the benefit of his wife or children, contain a trust in favour of the objects named. The assured is empowered to nominate a trustee, and if he does not do so, becomes himself a trustee. The plaintiff, in September, 1901, insured his life with the defendant company in the sum of £300, the insurance moneys being made payable at the expiration of twenty years, or upon his death before that time, to his wife if she were living, or if she were not then living, to his children. It was a condition of the policy that, after payment of three full years' premiums, upon non-payment of any subsequent premium on the date called for in the policy, or within sixty days thereafter, the policy might be surrendered, and the company would, within sixty days from the date of the surrender, pay for the policy an amount specified in an accompanying table. In the event, after payment of three full years' premiums as provided, the plaintiff made application to the company for the surrender value of the policy, enclosing the signed consent of his wife. There were two children of the marriage, both alive, but under age. *Held*, that the trust declared by the statute applied to the surrender value, as well as the moneys finally payable. *Held also*, that the plaintiff was entitled to sue alone for the surrender value, and that he could give an effectual discharge to the company, which was not bound to see that the money was applied in accordance with the trust. Decision of the Supreme Court of New South Wales affirmed. MUTUAL LIFE INSURANCE CO. OF NEW YORK *v.* PECHOTSCH, 2 C.L.R. 823; 11 A.L.R. 467; 5 S.R. 252; 22 W.N. 103. [*New South Wales.*]

—— **Endorsement—Subsequent will.**—An indorsement on a life assurance policy by the assured, apportioning the money between certain children named by him, the policy on its face declaring that the assurance was for his own benefit, does not, in the absence of special circumstances, affect his right to deal with the moneys contracted to be paid under the policy in a different way by a subsequent testamentary disposition. *In re* BENNETTS, 7 N.Z. Gaz. L.R. 261. [*New Zealand.*]

—— **Declaration of good health.**—A declaration of good health in a proposal for a policy of life insurance is an assertion of freedom from any apparent sensible disease or symptom of disease, and of an absence of knowledge on the part of the proponent of any derangement of the bodily functions by which

health can be tested. Such a declaration constitutes a warranty and inquiry by the Court or the jury as to whether or not the state of health of the proponent was such as to affect the risk is therefore immaterial; the sole issue being the truth or falsehood of the warranty. NATIONAL MUTUAL LIFE ASSOCIATION *v.* KIDMAN, 11 A.L.R. 461; 7 W.A.L.R. 64. [*Western Australia.*]

—— **Mortgage of policy.**—A mortgagee under a mortgage in the statutory form under the Life Assurance Policies Act, 1884, has the usual and incidental powers and rights of a mortgagee. He can, therefore, give a good receipt for the whole amount payable without the concurrence of the policy-holder or a subsequent mortgagee, and if payment be refused, he can recover interest. Mere knowledge that the amount due on the second mortgage is disputed is not sufficient to justify a refusal to pay where no claim has been made by the policy-holder or the subsequent mortgagee. NOLAN *v.* THE MUTUAL LIFE ASSOCIATION OF AUSTRALASIA, 24 N.Z. L.R. 215. [*New Zealand.*]

—— **Oppressive mortgage.**—A policy-holder in order to raise money upon the equity of redemption of a policy of life assurance on his own life, which had been twice mortgaged, and which was in the hands of the first mortgagee, gave a third mortgage, in which he covenanted that, in consideration of £100 advanced, he would, twenty years from date, pay to the mortgagees the sumof £300, also any moneys advanced beyond the £100, and compound interest at ten per cent. The surrender value of the policy was at the date of the mortgage only £8. The date of repayment was placed many years beyond the probable life of the mortgagor, but there was a proviso protecting the policy-holder's estate, and limiting all liability to what the policy itself would produce after the payment of the two prior mortgages. At the date of death the policy produced, after payment of such mortgages, the sum of £344 0s. 5d., net. On these facts, *held*, that the mortgage was oppressive in its terms, and that it should be varied by allowing repayment of £100 and advances, and simple interest at 10 per cent. *In re estate of* ELLIS, 7 N.Z. Gaz. L.R. 89. [*New Zealand.*]

—— **Stamp Act, 1886, sec. 11—Transfer—Life Assurance Companies Act, 1882, sec. 66.**—Sec. 11 of the Stamp Act, 1886, does not affect the special provisions of sec. 66 of the Life Assurance Companies Act, 1882, and a life assurance company cannot be compelled to register a transfer indorsed on a policy containing a reference in such indorsement to the fact that the transfer is a transfer for securing the repayment of money. SMEATON *v.* THE MUTUAL LIFE ASSOCIATION OF AUSTRALASIA, 1904 S.A.L.R. 147. [*South Australia.*]

—— **Crown debt.**—Payment of a Crown debt cannot be enforced against the proceeds of a life policy which is within the protection of sec. 4 of the Life Fire and Marine Insurance Act, 1902. *In the estate of* MATTSON, 22 W.N. 159. [*New South Wales.*]

—— **Policy incorporating foreign law.**—*See* CONTRACT. JOHNSON *v.* MUTUAL LIFE INSURANCE CO. OF NEW YORK, 5 S.R. 16; 21 W.N. 108. [*New South Wales.*]

Fire insurance — Proposal — Mis-statement of facts. — To the question "Have you ever had a fire loss or made a claim for fire loss upon an insurance company?" the plaintiff answered "Yes, May 13th, 1903. New Zealand Insurance Co." The defendants pleaded that this was a misstatement of fact. *Held*, that the plea was good since if the defendants could show that the plaintiff had in fact had other fires the answer would amount to a misstatement. STIBBARD *v.* STANDARD FIRE AND MARINE INSURANCE CO. OF N.Z., 5 S.R. 473; 22 W.N. 144. [*New South Wales.*]

—— **Arbitration clause — Construction.**—*See* ARBITRATION. *In re* COLEMAN *v.* ROYAL INSURANCE CO., 24 N.Z.L.R. 817; 7 Gaz. L.R. 414. [*New Zealand.*]

—— **Agreement to refer to arbitration.**—*See* ARBITRATION. STIBBARD *v.* STANDARD FIRE AND MARINE INSURANCE CO. OF N.Z., 5 S.R. 473; 22 W.N. 144. [*New South Wales.*]

—— **Companies liable to contribute to Fire Brigades Board.**—*See* FIRE BRIGADES. YORKSHIRE FIRE AND LIFE INSURANCE CO. *v.* BRITISH ANH FOREIGN MARINE INSURANCE CO., 1905 V.L.R. 503; 27 A.L.T. 39; 11 A.L.R. 318. [*Victoria.*]

—— **Charge of corruption—Directors of insurance society—Commission on new business.**—The directors of a life insurance society received commission upon new business introduced by them and also upon loans effected. The articles of association made no reference to such commission, but provided otherwise for the remuneration of the directors. *Held*, that the taking of the commission under such circumstances and unknown to the general body of policy-holders was a malpractice which might be well called "corruption." GLISSAN *v.* CROWLEY, 5 S.R. 219; 22 W.N. 100. *See* CROWLEY *v.* GLISSAN, 2 C.L.R. 744. [*New South Wales.*]

INTEREST.

Computation.—There is no inflexible rule as to the mode of computing time when the question is whether both the first and last days of a period are to be included. In an agreement in reference to giving up possession of lands taken by the Minister under statutory powers, it was provided that the plaintiffs should give up possession on 1st March, with

power, however, for them to retain possession till 31st March; and the Minister was to pay interest from date of possession on any sum awarded as compensation. Possession was given up on 31st March, and the compensation was paid at 12.30 on the 26th May. *Held*, that interest was payable for 55 days and not for 56. CLIFFORD *v.* MINISTER FOR LANDS, 8 N.Z. Gaz. L.R. 89. [*New Zealand.*]

By way of damages—Time certain—Demand prevented by default of defendant.—Goods were sold by the plaintiffs to the defendants, shipment to be as instructed by the defendants, terms cash against documents, the purchasers to provide shipping and take delivery. The defendants for a long time neglected to take delivery or to pay the purchase money. *Held*, (1) that the purchase money was not payable at a time certain within the meaning of 3 & 4 Will. IV. c. 42, secs. 3 and 4 (2); that it was by the default of the defendants that the plaintiffs were prevented from being in a position to make a demand for the purchase money, and that, therefore the plaintiffs were entitled to interest by way of damages. *London, Chatham and Dover Railway Co.* v. *South Eastern Railway Co.* (1892 1 Ch. 120), followed. RAYMOND & CO. *v.* FRIEDLANDER BROS., 7 N.Z. Gaz. L.R. 163. [*New Zealand.*]

On unpaid balance of purchase money.—*See* VENDOR AND PURCHASER. STRAHORN *v.* STRAHORN, 5 S.R. 382; 22 W.N. 119 [*New South Wales.*]

Money paid under void contract.—*See* LOCAL GOVERNMENT. MCEWAN *v.* CHAIRMAN, &C. OF COUNTY OF SOUTHLAND, 24 N.Z.L.R. 652; 7 Gaz. L.R. 538. [*New Zealand.*]

On legacy.—*See* WILL. *In the will of* CARFRAE; MURRAY *v.* CALVERT, 1905 V.L.R. 641; 27 A.L.T. 71; 11 A.L.R. 451. [*Victoria.*]

On compensation money for resumed lands.—*See* PUBLIC WORKS. GLENN *v.* BOARD OF LAND AND WORKS, 1905 V.L.R. 518; 26 A.L.T. 245; 11 A.L.R. 175. [*Victoria.*]

Not asked for in statement of claim.—*See* PLEADING. BAILY *v.* CAMPBELL, 7 N.Z. Gaz. L.R. 658. [*New Zealand.*]

Miscalculation in judgment.—*See* JUDGMENT. NINNIS *v.* MILLER, 1905 V.L.R. 669; 27 A.L.T. 125; 11 A.L.R. 479. [*Victoria.*]

INTERPLEADER.

Appeal.—Special leave to appeal from the decision of a Judge at *Nisi Prius*, in an interpleader issue under Supreme Court Rules, Order 53, rule 11, will be given by the Full Court on good cause shown, though no application for leave has been made to the Judge. IDA H. GOLD-MINING CO. *v.* JONES, 7 W.A. L.R. 29. [*Western Australia.*]

—— **Sheriff's interpleader — Costs.**—The claimant's costs of appearance to an interpleader summons were ordered to be paid by the judgment creditor, though the judgment creditor had withdrawn after the issue of the summons. BARLOW *v.* LAMBERT, 22 W.N. 6. [*New South Wales.*]

The sheriff is not entitled to the costs of an interpleader summons without an order to that effect under sec. 8 of the Interpleader Act, even though he has issued the summons at the request of the judgment creditor. In future, however, an order will be made for the sheriff's costs, against the claimant if he does not appear to contest the claim, or, where an issue is tried, against the unsuccessful party. MASSEY HARRIS CO. *v.* FOLEY, 22 W.N. 6. [*New South Wales.*]

—— **Non-appearance by claimant.**—Where the claimant does not appear upon a sheriff's interpleader summons he may be ordered to pay costs. KIRWAN *v.* WILLIAMS (WILLIAMS CLAIMANT), 21 W.N. 253. [*New South Wales.*]

And *see* PRACTICE.

—— **Order barring claim.**—Where the claimant neglects to comply with the interpleader order he may be ordered to pay to the plaintiff the costs paid to the sheriff for possession and charges deducted by the sheriff in consequence of the claim. ARMSTRONG & CO. *v.* TOBIN, 22 W.N. 112. [*New South Wales.*]

In District and County Courts.—*See* DISTRICT AND COUNTY COURTS.

INTERROGATORIES.

See DISTRICT AND COUNTY COURTS—PRACTICE.

JOINT STOCK COMPANY.

See COMPANY.

JUDGMENT.

Judgment recovered—Actions against executor in personal and representative character.—M.A.F. and C.E.F. as executrixes of D.F., deceased, and under a power in his will, carried on the business of their testator until the death of C.E.F. After the death of D.F., and before the death of C.E.F., goods were supplied by the plaintiffs for the purposes of the business, and M.A.F. and C.E.F. gave to the plaintiffs promissory notes for the price of such goods. After the death of C.E.F., the plaintiffs brought an action in the Local Court against M.A.F., as surviving executrix of D.F., in respect of the balance due on these

promissory notes, and recovered judgment. That judgment remaining unpaid, the plaintiffs commenced a second action in the Local Court for the price of the same goods, against M.A.F. personally, and X., as the administrator of the estate of C.E.F. On a plea of *res judicata* the plaintiffs were nonsuited in the local Court. *Held*, on appeal, that, there being one liability only, the doctrine of election had no application, and that the amount claimed was a debt for which the executrixes of D.F., were jointly liable, personally, and not *de bonis testatoris*; and, therefore, that M.A.F. being personally liable on the judgment in the first action, her plea of *res judicata* to the second action was valid; but that, by virtue of sec. 86 of the Local Courts Act, 1886, the second action was maintainable against X. FAULDING & Co. *v.* FOTHERINGHAM, 1904 S.A.L.R. 1 [*South Australia.*]

Amendment—Entry—Error in entering—Practice.—In entering up a judgment in the Supreme Court upon a certificate of judgment in the County Court, an over calculation of the amount of interest was made. *Held*, that an application for amendment should not be made *ex parte*, but by motion or summons. *Quære*, whether the miscalculation of interest was a clerical error or an accidental slip within the meaning of O. XXVIII., r. 11. *Semble*, that the entry up of judgment is a "proceeding" within the meaning of O. XXVIII., r. 12, and an error in the calculation of interest can be amended thereunder. NINNIS *v.* MILLER, 1905 V.L.R. 669; 27 A.L.T. 125; 11 A.L.R. 479. [*Victoria.*]

Staying proceedings on.—*See* EXECUTION.

Setting aside—Delay—Payment—Tender.—A writ under the instruments Act, 1890, sec. 92 was served in Beulah, on 7th June, 1904. Within four days of the service the defendant sent a telegram to the plaintiff's solicitors in Melbourne, advising them that he had telegraphed the full amount claimed by the writ. The solicitors wrote to defendant to the effect that, if the defendant desired them to do so, they would treat the order as a payment on account on hearing from him, but that the defendant must pay "the costs mentioned in the writ." There were no costs mentioned in the writ. The letter could not have reached the defendant until the four days after service of the writ had expired. The defendant wrote in reply that he intended the order as payment in full. The solicitors then wrote to the effect that they would not accept the order as payment and that they would sign judgment. No reply being received, on 29th July judgment by default was signed and execution was issued, and the solicitors on the same day informed the defendant that this had been done. The warrant of distress was executed on 20th September, and on 10th October, the defendant took out a summons to set aside the judgment. *Held*, by Holroyd and Hodges JJ. (a'Beckett J. dissenting), that the defendant had by his delay in applying to set aside the judgment disentitled himself to that relief. Judgment of Hood J. affirmed. *Quære*, whether there was either payment or tender of the amount claimed by the writ. OSBORNE *v.* ANDERSON, 1905 V.L.R. 427; 26 A.L.T. 225; 11 A.L.R. 239. [*Victoria.*]

—— **Summons.**—A summons to set aside a judgment was dismissed on the ground that the affidavit in support of the summons did not state that judgment had been signed. WEBER, LOHMANN & Co. *v.* TURNER, 22 W.N. 52. [*New South Wales.*]

—— **Consent judgment—Mistake.**—A judgment by consent entered through a misapprehension by the party as to the terms of the agreements was by consent set aside. *In re* INCOME TAX ACT, 1902, 1905 Q.W.N. 46; 2 C.L.L.R. 185. [*Queensland.*]

Compromise with one of several defendants.—Where, before judgment, a compromise has been effected between the plaintiff and one of several defendants jointly liable in the action, and in pursuance thereof the action is dismissed as against him, and the document of compromise contains a reservation of rights against the co-defendants which prevents it from having a releasing effect as against the co-defendants, the judgment should show that the action is dismissed as against that defendant upon the terms mentioned in the document of compromise. WILKIE *v.* McCALLA, 1905 V.L.R. 278; 26 A.L.T. 133; 11 A.L.R. 43. [*Victoria.*]

Entry on appeal against verdict.—Circumstances indicated under which the verdict of the jury will be set aside and judgment entered on appeal for the defendant. NATIONAL MUTUAL LIFE ASSOCIATION *v.* KIDMAN, 11 A.L.R. 461; 7 W.A.L.R. 64. [*High Court.*]

Motion for judgment under Order XXVII, r. 11—Affidavit in support.—*See* THOMSON *v.* BYRNE, 11 A.L.R. (C.N.) 49. [*Victoria.*]

In District and County Courts.—*See* DISTRICT AND COUNTY COURTS.

JUDGMENT SUMMONS

See DISTRICT AND COUNTY COURTS.

JURY.

Equity suit—Application for jury—Practice—In the absence of special circumstances the Court will not, where the application is opposed, direct that the issues of fact in an Equity suit brought to set aside certain deeds for alleged fraud and misrepresentation be

tried by a jury. SULLIVAN *v.* ENGLISH, SCOTTISH AND AUSTRALIAN BANK, 5 S.R. 52; 22 W.N. 2. [*New South Wales.*]

Trial—Judge without jury—Specific performance.—A suit for specific performance of an agreement for a lease can be more conveniently tried by a Judge alone, notwithstanding that the main question is whether the contract was in fact entered into. If at the hearing it appears desirable that an issue of fact should be determined by a jury, the Court can make an order directing it to be so tried. QUINLAN *v.* GREAT NORTHERN BREWERY COMPANY, 24 N.Z.L.R. 226. [*New Zealand.*]

Special jury—Position of parties.—In an action for libel brought by a firm which had borne a high reputation and had been established for 50 years to recover damages against the defendants who were carrying on the business of trade protection, the Full Court refused an application for a special jury of 12. MACINTOSH *v.* DUN, 22 W.N. 85. [*New South Wales.*]

—— **Expert knowledge.**—In an action on a policy of fire insurance where the property destroyed consisted of photographic stock, and the affidavit stated that expert evidence would be necessary to explain the effect of fire on such stock, which evidence it would require expert knowledge to understand, *held*, that a special jury should be granted. AUSTRALASIAN FINE ARTS STUDIO CO. *v.* VICTORIA INSURANCE CO., 7 N.Z. Gaz. L.R. 653. [*New Zealand.*]

The Juries Act Amendment Act, 1898, has deprived the Court of any discretion in the granting of special juries, and has made the order for a special jury depend (where both parties do not agree) not on the character, importance, or difficulty of the case, but upon the point that in the opinion of the Court or Judge expert knowledge is required. The words in sec. 3 of the above Act, "expert knowledge is required," means that the jury will have in determining the case expert knowledge. Such knowledge may be already existing in their minds, or may have to be acquired by the expert evidence to be tendered. To obtain an order for a special jury it is not sufficient merely that there will be some expert evidence given at the trial. R. *v.* CHAWORTH-MUSTERS, 24 N.Z.L.R. 223. [*New Zealand.*]

Increased fee—Prevailing party.—At the trial of an action increased fees were ordered for the jurymen. The verdict being for the plaintiff a new trial was ordered, and notice thereof given, but the action was not set down within the time prescribed by O. XXXIX., r. 15, and no application made to extend the time. A sum was paid by the defendants to the plaintiff in full settlement of the claim and costs. *Held*, that the defendants were the prevailing party within the meaning of s. 49 of the Jury Act, 1867, and as such liable to pay the increased fees. JOHANSEN *v.* CITY MUTUAL LIFE ASSURANCE SOCIETY, 1905 Q.W.N. 24. [*Queensland.*]

Excuse for attendance—Important meeting.—*In re* X., 1905 Q.W.N. 26. [*Queensland.*]

In Bankruptcy.—*See* BANKRUPTCY AND INSOLVENCY. *Re* ALLEN, 5 S.R. 55; 22 W.N. 47. [*New South Wales.*]

In criminal cases.—*See* CRIMINAL LAW.

In District and County Courts. — *See* DISTRICT AND COUNTY COURTS.

JUSTICES.

JURISDICTION—Refusal to exercise—Mandamus.—Where a magistrate has refused to exercise jurisdiction on the ground that a question of title is involved, and upon the undisputed facts it is clear that the plaintiff must have failed on the merits, he cannot come to the Supreme Court for a mandamus to compel the magistrate to determine the question. THE TUAPEKA HOSPITAL BOARD *v.* CRUICKSHANK AND COLLINS, 24 N.Z.L.R. 744; 8 Gaz. L.R. 81. [*New Zealand.*]

—— **Recognisance—Naval deserter.** — A magistrate has no jurisdiction to require a recognisance for the due appearance of a man charged with desertion from one of His Majesty's ships of war, and consequently has no jurisdiction to estreat such a recognisance when the alleged deserter fails to appear according to the condition therein contained. *In re* WALTERS; LAWRENCE'S RECOGNISANCE, 7 N.Z. Gaz. L.R. 259. [*New Zealand.*]

—— **Title to land.**—In an action for use and occupation, if a question of title arises it can only arise incidentally, and a magistrate would under sec. 34 of the magistrates' Courts Act, 1893, have jurisdiction to determine it. THE TUAPEKA HOSPITAL BOARD *v.*

CRUICKSHANK AND COLLINS, 24 N.Z.L.R. 744; 8 Gaz. L.R. 81. [*New Zealand.*] And *see* SELL *v.* MURRAY, 27 A.L.T. 120; 11 A.L.R. 435. [*Victoria.*]

If cattle are impounded off private land by the owner thereof, and there is a *bona fide* dispute as to whether the owner of the cattle is not, upon the proper construction of a written agreement, entitled to depasture them thereon, that raises a question of title and ousts the Court's jurisdiction to hear an information under s. 47 of the Impounding Act, 1884, for illegal impounding. *Chew v. Holroyd* (22 L.J. Ex. 95), and *Proudfoot* v. *Bunbury* (Mac. 1060), followed. CROWLEY *v.* ANDRESEN, 7 N.Z. Gaz. L.R. 453. [*New Zealand.*]

—— **Bona fide claim of right.**—Where on a prosecution for trespass the defendant contends that the by-law which makes him a trespasser is *ultra vires*, this raises a *bona fide* claim of right and ousts the jurisdiction. FAIRBAIRN *v.* STEAD, 7 N.Z. Gaz. L.R. 330. [*New Zealand.*]

—— **Use and occupation.**—The fact that on the hearing before justices of a complaint for use and occupation, the evidence shows only a right to rent under a tenancy agreement, does not deprive the justices of jurisdiction within the meaning of s. 2 of the Justices Act, 1904, to deal with the complaint. SELL *v.* MURRAY, 27 A.L.T. 120; 11 A.L.R. 435. [*Victoria.*] And *see* TUAPEKA HOSPITAL BOARD *v.* CRUICKSHANK AND COLLINS, 24 N.Z.L.R. 744; 8 Gaz. L.R. 81.

—— **Rates—Civil debt—Six years.**—Where a municipality proceeds by way of default summons to recover rates, such proceeding is one to recover a civil debt recoverable summarily, and therefore sec. 201 of the Justices Act, 1890, is an answer to so much of the claim as is more than six years old. BEECHWORTH, PRESIDENT OF SHIRE OF, *v.* SHOEBRIDGE, 1905 V.L.R. 673; 27 A.L.T. 73; 11 A.L.R. 386. [*Victoria.*]

—— **Claim by solicitor—Bill of costs.**—*See* ATTORNEY AND SOLICITOR. SHARP *v.* SOUTHERN, 1905 V.L.R. 223; 26 A.L.T. 231; 11 A.L.R. 162. [*Victoria.*]

DISQUALIFICATION — Possibility of bias—Auctioneer's licensing meeting.—A justice who is himself an applicant for an auctioneer's license should not take part in a meeting held for the purpose of considering applications for auctioneers' licenses. *Ex parte* LUCAS, 5 S.R. 113; 22 W.N. 20. [*New South Wales.*]

INFORMATION AND COMPLAINT—Who may lay.—Where an Act of Parliament is a public Act for the public benefit *prima facie*, anyone is entitled to prosecute for an offence under it. The Stock Disease Act, 1890, is within this principle. LIZARS *v.* SABELBERG, 1905 V.L.R. 608. [*Victoria.*]

—— **Licensing Act—Being drunk while in charge of carriage.**—*See* LICENSING. PROUDFOOT *v.* POWER, 1905 V.L.R. 610; 27 A.L.T. 84; 11 A.L.R. 411. [*Victoria.*]

—— **Absence of written information.**—*See* THOMPSON *v.* GREY, 24 N.Z.L.R. 457; 7 Gaz. L.R. 136, *infra., col.* 164.

—— **Alleging exceptions.**—An information charging a breach of Reg. 13 of the Timber and Quarry Regulations of the 1st February, 1903, was *held* to be good although it did not negative the exception mentioned in the regulation. *Ex parte* MARA, 22 W.N. 149. [*New South Wales.*]

—— **Disclosing no offence.**—*See* NOXIOUS WEEDS. GOODWIN *v.* ROSS, 7 N.Z. Gaz. L.R. 545. [*New Zealand.*]

—— **Complaint—Time for laying—Stamp Act.**—*See* STAMP DUTIES. O'BRIEN *v.* DOUGLAS, 1905 S.R. (Q). 142; Q.W.N. 54. [*Queensland.*]

SUMMONS AND WARRANT—Vagrancy Act—No summons or warrant.—*See* VAGRANCY.—WILSON *v.* BENSON, 1905 V.L.R. 229; 26 A.L.T. 144; 11 A.L.R. 85. [*Victoria.*]

HEARING—Authority to prosecute—Breach of shire council by-law.—*See* LOCAL GOVERNMENT. MCCLURE *v.* CANNING, 1905 Q.W.N. 19. [*Queensland.*]

—— **Charge under Pastures Protection Act, sec. 49.**—*See* PASTURES PROTECTION. *Ex parte* WATSON, 4 S.R. 656; 21 W.N. 248. [*New South Wales.*]

—— **Alteration of charge—Defendant not present—Representation by counsel.**—Defendant was charged under 1902 No. 18 with being the keeper of a betting house and remanded. When the case came on for hearing defendant was not present, but was represented by counsel. The charge as originally laid disclosing no offence, a fresh one was handed in and read. Counsel for defendant stated he had no instructions to appear for him on any charge except that on which he was remanded, and retired from the Court. The new charge was proceeded with the and the defendant convicted. *Held*, that the magistrate had no power to proceed against the defendant on the new charge, the defendant not being present either personally or by counsel. *Ex parte* DUNN, 5 S.R. 116; 22 W.N. 13. [*New South Wales.*]

—— **Plea—What amounts to plea of guilty.**—LENNOX *v.* CURRAN, 11 A.L.R. (C.N.) 22 [*Victoria.*]

—— **Accused called upon to plead before close of case for prosecution.**—Where an information was laid under sec. 502 of the Crimes Act, 1900, the accused should not be called upon to plead until the case for the prosecution has closed. The procedure as

laid down in *Ex parte Wilson* (20 W.N. 71) approved by the Full Court. *Ex parte* FINLAYSON, 22 W.N. 63. [*New South Wales.*]

—— **Adjournment.**—Where a complaint is amended, the justices have a discretion to grant an adjournment or not, and where the application for an adjournment is, in the opinion of the justices, made merely for the purpose of harassing the complainant, an adjournment may be rightly refused. KRUMMEL *v.* KIDD, 1905 V.L.R. 193; 26 A.L.T. 131. [*Victoria.*]

—— **Presence of accused.**—An accused person is entitled as of right to be present during the whole of the hearing of the case against him, so long as he behaves himself with propriety, and justices have no power to order him out of Court during the hearing of a legal argument, on the ground that the hearing of the discussion thereon might suggest matters of evidence to him. O'DONNELL *v.* DAWE, 1905 V.L.R. 538; 27 A.L.T. 47; 11 A.L.R. 273. [*Victoria.*]

—— **Summary jurisdiction — Indictable offence—Written information.**—The appellant and her husband appeared before a magistrate, in obedience to a summons, to answer to an information (under sec. 3 of the Children's Protection Act, 1890) charging that they, being persons having the control of a girl of the age of thirteen years, did wilfully ill-treat her in a manner likely to cause her unnecessary suffering and injury to her health, being an indictable offence. Under the section referred to such an offence is an indictable offence, but may also be dealt with in a summary way, the only difference made being that on summary conviction the maximum punishment is less than on conviction on indictment. The information was in Form No. 31 in the First Schedule to the Justices of the Peace Act, 1882, as for an indictable offence. The offence, if dealt with summarily, might under the abovementioned section be punished with imprisonment for any term not exceeding three months. At the hearing the magistrate and the solicitor for the accused assumed that the charge had to be dealt with summarily unless the accused claimed, under sec. 6 of the Indictable Offences Summary Jurisdiction Amendment Act, 1900, to be tried by a jury, and that that section applied (although it really applies only when there is a liability on summary conviction to imprisonment for a term exceeding three months); and the magistrate accordingly addressed the accused as required by subsection 2 of that section. Both the appellant and her husband answered that they did not desire to be tried by a jury. The magistrate then proceeded with the acquiescence of all the parties, to hear the charge as one of an offence punishable summarily, but no fresh information was drawn up (in Form No. 4 in the First Schedule to the Justices of the Peace Act, 1882), as for a matter determinable summarily. The magistrate convicted the appellant. *Held*, that the conviction was good, notwithstanding the want of an information in writing in Form No. 4—(1) *Per* Stout C.J. and Cooper J., on the ground that the appellant had voluntarily appeared and answered to the charge, as one determinable summarily, before a magistrate having jurisdiction to hear and determine it in a summary way, within the meaning of sec. 73 of the Justices of the Peace Act, 1882. (2) *Per* Cooper J., on the ground also, that apart from the provisions of sec. 73, the absence of a written information could be and had been waived. *Semble*, also, *per* Cooper J., that the mere inclusion in the information (treating it as one for a matter determinable summarily) of the words "being an indictable offence" was a defect in form within the meaning of sec. 74 of the Justices of the Peace Act, 1882, to which, therefore, no objection could be taken. THOMPSON *v.* GREY, 24 N.Z.L.R. 457; 7 Gaz. L.R. 136. [*New Zealand.*]

Where a person is charged before a magistrate with an offence which is not *per se* indictable, but in respect of which he is entitled, under sec. 6 of the Indictable Offences Summary Jurisdiction Amendment Act, 1900, to claim to be tried by a jury, and he duly claims to be so tried, the proceeding must thenceforward be taken in all respects as if it were a proceeding for an indictable offence; and if, on the magistrate intimating at the close of the preliminary hearing that he proposes to commit, the accused chooses to plead guilty, he must be committed to the Supreme Court for sentence, under sec. 13 of the above Act, as if the offence had been indictable *per se*. *Semble*, however (*per* Edwards J.; Williams and Denniston JJ. concurring), that a person who has elected to have his case dealt with under sec. 6 may afterwards abandon such right, and may, upon such abandonment, be dealt with by the magistrate summarily. *Per* Stout C.J. and Cooper and Chapman JJ.—If a prisoner claims the privilege given by sec. 6, the magistrate ought to enter some statement to that effect upon the depositions. *Per* Edwards, J. (Williams and Denniston JJ. concurring).—Although it is not necessary that the special jurisdiction given by sec. 6 should appear upon the face of the proceedings—*R.* v. *Chambers* (65 L.J.M.C. 214; 18 Cox. C.C. 401), and *R.* v. *Brown* ([1895] 1 B.Q. 119; 18 Cox C.C. 81), it is highly desirable that the committing magistrate should in all cases show upon the face of the proceedings that the requirements of subsec. 2 of sec. 6 have been complied with, and that the prisoner has claimed to be tried by a jury. R. *v.* HILLS, 24 N.Z. L.R. 37. [*New Zealand.*]

—— **Children's Protection Act.**—The provision of sec. 3 of the Children's Protection Act, 1890, that any person committing an offence under the section shall be liable to certain punishments "on conviction thereof in a summary way" necessarily incorporates the ordinary procedure for the prosecution of

offences determinable summarily ; and if sec. 12 of the same Act does not incorporate that procedure in a case under sec. 3, there is nothing in sec. 12 to exclude its application in such a case. THOMPSON *v.* GREY, 24 N.Z. L.R. 457 ; 7 Gaz. L.R. 136. [*New Zealand.*]

CONVICTION AND ORDER — Conviction disclosing no offence—Amendment.—A conviction disclosing no offence cannot be amended under the Courts of Justice Technical Defects Removal Act, 1892. *R. v. Padbury* (5 Q.B.D. 126), followed. GOODWIN *v.* ROSS, 7 N.Z. Gaz. L.R. 545. [*New Zealand.*]

—— **Proof of.**—*See* EVIDENCE. R. *v.* EGAN, 7 N.Z. Gaz. L.R. 78. [*New Zealand.*]

—— **Previous conviction—Limitation of time.**—*See* VAGRANCY. R. *v.* EGAN, 7 N.Z. Gaz. L.R. 78. [*New Zealand.*]

—— **Order--Destitute Persons Act—Amendment.**—*See* DESERTED WIVES AND CHILDREN. SMITH *v.* SMITH, 7 N.Z. GAZ L.R. 540. [*New Zealand.*]

—— **Setting aside order.**—An information for an offence was dated and made returnable on an impossible date. The defendant was served but did not appear and he was convicted. The mistake having been discovered, the conviction was set aside by a police magistrate, on the *ex parte* application of the informant. Another information and summons for the same offence was issued and served on the defendant who appeared and pleaded *autrefois acquit*, but was again convicted. *Held*, that the police magistrate had no jurisdiction to set aside the first conviction, and the second conviction was bad. Sec. 89 (4) of the Justices Act, 1890, applies to cases of applications by a party who was absent from the hearing and against whom an order was made and not to cases of applications by a party who was present, and in whose favour the order was made. Justices have no inherent power to rectify or set aside orders. *Semble*, sec. 89 (4) of the Justices Act, 1890, applies only to civil proceedings. GREGORY *v.* MURPHY, 11 A.L.R. 507. [*Victoria.*]

RES JUDICATA—Dismissal on preliminary objection.—An information was dismissed on the ground of a variance between the information and the summons, no evidence being given. A second information having been brought for the same offence, *held*, that the matter was not *res judicata*. *Ex parte* CURRY, 21 W N. 260. [*New South Wales.*]

—— **Dismissal on merits.**—Where a previous application has been dismissed on the merits, the justices on a subsequent application ought to defer so much to the former decision as to treat the matter as *res judicata*, unless it be shown that the first trial was not fair. CLAXTON *v.* CLAXTON, 1905 S.R. (Q.) 87 ; Q.W.N. 37. [*Queensland.*]

—— **Previous conviction set aside.** — GREGORY *v.* MURPHY, 11 A.L.R. 507, *supra, col.* 165.

—— **Vermin destruction—Autrefois acquit.** *See* PASTURES PROTECTION. HUNTER *v.* WILLIAMS, 1905 V.L.R. 513 ; 27 A.L.T. 6 ; 11 A.L.R. 256. [*Victoria.*]

—— **Tenements recovery.**—*See* LANDLORD AND TENANT. CLISDELL *v.* GIBNEY, 4 S.R. 670 ; 21 W.N. 237. [*New South Wales.*]

—— **Autrefois convict.**—*See* CRIMINAL LAW. *Ex parte* SPENCER ; SHERWOOD *v.* SPENCER, 2 C.L.R. 250 ; 5 S.R. 150 ; 22 W.N. 40. [*New South Wales.*]

—— **Mandamus—Justices Act, 1902, sec. 134.**—Justices having struck out a case upon the ground that the matter was *res judicata*, the Court granted a mandamus under sec. 134 of the Justices Act, 1902. *Ex parte* CURRY, 21 W.N. 260. [*New South Wales.*]

DEPOSITIONS—Admissibility as statements made in prisoner's presence. *See* CRIMINAL LAW.

APPEAL—To Supreme Court—Order for less than £5.—*Semble*, an order of justices for less than £5, exclusive of costs, is not rendered appealable within sec. 2 of the Justices Act, 1904, by the fact that it may indirectly affect the recovery between the same parties of a sum exceeding £5. SELL *v.* MURRAY, 27 A.L.T. 120 ; 11 A.L.R. 435. [*Victoria.*]

—— **Fisheries Act.**—Where an information for an offence under the Fisheries Act, 1902, is dismissed the complainant may apply to have a case stated under s. 101 of the Justices Act. OLSEN *v.* PAXINO, 22 W.N. 199. [*New South Wales.*]

—— **On question of fact.**—The Supreme Court will not overrule a magistrate on an appeal on matter of fact unless it appears clear that his finding was wrong—that it was demonstrably wrong. It is not sufficient that the appellate tribunal should have a doubt about the matter ; it must be reasonably certain that the magistrate was wrong. BERG *v.* SEMELOFF, 24 N.Z.L.R. 522 ; 7 Gaz. L.R. 4. [*New Zealand.*]

—— **Infants' Protection Court.**—*See* DESERTED WIVES AND CHILDREN. WHARTON *v.* SCHOFIELD, 22 W.N. 38. [*New South Wales.*]

—— **Public Works Act, 1900, sec. 18.**—*See* PUBLIC WORKS. MCGREGOR *v.* WILLIAMS, 24 N.Z.L.R. 795 ; 7 Gaz. L.R. 363. [*New Zealand.*]

—— **Application to construct road for timber.—Public Works Act.** *See* PUBLIC WORKS.

—— **Reference of case by Judge to Full**

Court.—A Judge has power to refer a special case to the Full Court without consent of the parties. SELF *v.* COLE, 22 W.N. 52. [*New South Wales.*]

—— **Application to state case.—Telegram.**—A telegram signed by the solicitor for the appellant, and addressed and despatched to the magistrate who tried the case, applying to him to state a case, *held*, su cient to satisfy the requirements of sec. 236 of the Justices of the Peace Act, 1882. FOUNTAIN *v.* MCDONNELL, 7 N.Z. Gaz. L.R. 14. [*New Zealand.*]

—— **Prohibition granted in the same matter.**—Where a party asked the magistrate to state a special case and subsequently obtained a rule *nisi* for a prohibition, which rule was made absolute before the special case was heard the Full Court dismissed the special case with costs. CLOUGH *v.* WARK, 22 W.N. 11. [*New South Wales.*]

—— **Service of notice of appeal—Jurisdiction to hear case.**—Upon the hearing of a special case to which there were four respondents it appeared that the notice required by sec. 105 of the Justices Act had been personally served upon one respondent, but in the case of the other three respondents the service had been effected upon an adult person at their respective places of abode. *Held*, that the Court had no jurisdiction to hear the case. LYNCH *v.* ANDERSON, 22 W.N. 42. [*New South Wales.*]

—— **Appeal upheld on ground submitted—Right of respondent to argue other points decided against him.**—When on the hearing of a special case the question submitted by the magistrate is decided in favour of the appellant, the respondent is entitled to argue other points taken before the magistrate. CLOUGH *v.* BATH, 22 W.N. 152. [*New South Wales.*]

—— **Grounds not taken below.**—If an information is laid for illegal impounding, and at the hearing title to land comes into question, and a magistrate hears and decides the case, and there is an appeal from his decision on a question of law, the point may be taken at the hearing of the appeal, though not taken in the Court below, that as a question of title was involved, the magistrate had no jurisdiction. *Fairbairn* v. *Stead* (7 N.Z. Gaz. L.R.) applied. CROWLEY *v.* ANDRESEN, 7 N.Z. Gaz. L.R. 453. [*New Zealand.*]

—— **Grounds—Amendment.**—*See* LICENSING. PAYNE *v.* JOHNSTON, 7 N.Z. Gaz. L.R. 102. [*New Zealand.*]

—— **Amendment of conviction.**—Where the decision of justices is clear, it is the duty of a Judge on the return of an order *nisi* to review to look at the substance of the decision, and, if necessary, to alter the conviction so as to make it conform with the substance of the decision. POPE *v.* FRANKLIN, 26 A.L.T. 170; 11 A.L.R. 68. [*Victoria.*]

—— **Security.**—The security which an appellant is required to give under sec. 159 of the Magistrates' Courts Act, 1893, ought not to be for a greater sum than the appellant may, in the event of his appeal being unsuccessful, be liable to pay to the respondent. And where a plaintiff is appealing against a judgment given for the defendant upon a counterclaim of the defendant's, but the plaintiff has himself recovered judgment in the original action for a sum greater than the amount of the counterclaim, the security required should not exceed the costs of appeal which the appellant may be ordered to pay. THE WELLINGTON AND WANGANUI STEAM PACKET CO., LTD. *v.* HATRICK & CO., 24 N.Z. L.R. 650. [*New Zealand.*]

—— **Recognisance by town clerk.**—By the Justices Act, 1902 (2 Edw. VII. No. 11), sec. 197, it is provided that a party to a proceeding before justices who desires to appeal, on a point of law or excess of jurisdiction, may apply to the justices to state and sign a case; and by sec. 198 it is provided that "The appellant shall, at the time of making such application, and before a case is stated and delivered to him by the justice, enter into a recognisance before such justices or some other justices, with or without a surety or sureties, and in such sum as is directed by the justices or justice, conditioned to prosecute such appeal without delay, and to submit to the judgment of the Supreme Court and pay such costs as the Court shall award . . . . ." A complaint laid by T., town clerk of the Guildford municipality, on behalf of the municipality, against H. for breach of a by-law was heard by justices and dismissed. The complainant appealed by way of case stated under the Justices Act, 1902, sec. 197, and entered into a recognisance under sec. 198. The recognisance was entered into by T., described as town clerk of Guildford, and the condition indorsed was that "T., on behalf of the Guildford municipal council," should duly prosecute the appeal, etc. The case stated gave the parties as "town clerk, Guildford municipal council, appellant and H., defendant" and described the complaint as having been preferred by T. against H., while the magistrate's notes of evidence described the action as Guildford Town Council *v.* H. *Held*, that the town clerk had no authority to appeal against a decision against the municipal council, and that his recognisance was not binding upon the council and there having been no recognisance by the appellant as required by the statute the right of appeal had elapsed. THOMAS *v.* HALL, 5 W.A.L.R. 110. [*Western Australia.*]

—— **Non-appearance of appellant.**—Once a case has been transmitted to the Supreme Court, the questions arising thereon must be determined though the appellant does not

appear. COWAN *v.* HORNE, 1905 Q.W.N. 50. [*Queensland.*]

—— **To general sessions—Penalty under £5.**—No appeal to any Court of General Sessions will lie, under sec. 127 of the Justices Act, 1890, from the summary conviction of a Court of Petty Sessions by which is imposed any term of imprisonment in default of pay-of a fine not exceeding £5 under the provisions of any Act other than the Justices Act, 1890. CLAYTON *v.* DORAN, 27 A.L.T. 92; 11 A.L.R. 447. [*Victoria.*]

—— **Conviction under Immigration Restriction Act, 1901, sec. 7—Appeal.**—*See* FEDERAL LAW. AH YICK *v.* LEHMERT, 2 C.L.R. 593; 11 A.L.R. 306. [*Victoria.*]

—— **Recognisances—Forfeiture.**—*See* ST. JOHN *v.* STUART, 11 A.L.R. (C.N.) 42; 27 A.L.T. Supp. 1. [*Victoria.*]

—— **Recognisance defective—Substitution of valid one.**—CLAYTON *v.* DORAN, 11 A.L.R. (C.N.) 45; 27 A.L.T. Supp. 2. [*Victoria.*]

—— **No notice of application to quash or vary order—Delay.**—GROCOCK *v.* STEVENSON, 11 A.L.R. (C.N.) 50; 27 A.L.T. Supp. 5. [*Victoria.*]

—— **Costs.**—AGNEW *v.* RIDLEY, 11 A.L.R. (C.N.) 33; 27 A.L.T. Supp. 1. [*Victoria.*]

—— **To Quarter Sessions—Dismissal of complaint—Nonsuit.**—On the hearing of a complaint under s. 8 of the Infant Protection Act the magistrate refused to make any order. *Held*, that this amounted to a dismissal of the complaint, and that the complainant had the right to appeal to Quarter Sessions under sec. 26. *Ex parte* WOODLANDS, 5 S.R. 450; 22 W.N. 132. [*New South Wales.*]

—— **To District Court—Finality.**—Under sec. 159 of the Magistrates' Courts Act, 1893, appeals from decisions of magistrates are in general, to the Supreme Court, but section 165 provides that within the districts of the District Courts of Nelson and Westland, all appeals shall be not to the Supreme Court, but to the District Court having jurisdiction within the place where the magistrate's decision was given. Sec. 16 of the Court of Appeal Act, 1882, provides that the determination of the Supreme Court on appeal from inferior Courts shall be final unless leave to appeal from the same to the Court of Appeal shall be given. *Held*, that the section of the Court of Appeal Act could not be read as conferring on a District Court hearing an appeal from a magistrate under the provision of the Magistrates' Courts Act, the power to give leave to appeal from its decision to the Court of Appeal, and that the decision of a District Court on such an appeal is therefore final, there being no other provision giving a further appeal. LOBB AND ANOTHER *v.* RICHMOND, 24 N.Z.L.R. 266; 7 Gaz. L.R. 319. [*New Zealand.*]

LAND TAX.

See TAXATION.

LAND TRANSFER.

Application to bring land under Act—Doubtful title.—The Court will not order a District Land Registrar to bring land under the Act involving the decision of the rights of third parties in their absence, and also involving a liability on the part of the assurance fund, unless clearly satisfied that such a title has been shown as would be forced on an unwilling purchaser. *In re* LAND TRANSFER ACTS, 1885; *Ex parte* SMITH, 7 N.Z. Gaz. L.R. 567. [*New Zealand.*]

Caveat—Right of lessee to relief from forfeiture.—The right of a lessee to apply to the Supreme Court to be relieved from forfeiture of a lease is not a beneficial interest in land which can be protected by caveat in Form L, under sec. 138 of the Land Transfer Act, 1885. Even if it is such an interest the caveat ought not to be extended on an *ex parte* application made on the day of expiry without accounting for the delay, or showing that immediate proceedings to obtain relief from forfeiture were contemplated. *Ex parte* GRAVES, 7 N.Z. Gaz. L.R. 318. [*New Zealand.*]

—— **Public road—Right of municipal council to caveat.**—A municipal council is not entitled to lodge a caveat in respect of land which has been dedicated to the public as a road. *In re* COLES; MUNICIPAL DISTRICT OF CONCORD, CAVEATORS, 5 S.R. 259; 22 W.N. 72. [*New South Wales.*]

—— **Lapse—Practice.**—Upon an application for an order that a caveat in Form L in the Second Schedule to the Land Transfer Act, 1885, should not lapse, the Court ought not to determine the rights of the parties, but ought to leave the questions at issue to be settled in an action. The Court will not make an order extending the time indefinitely, or until the further order of the Court, unless with the consent of the parties, but ought to give the caveator a reasonable opportunity to establish the right in respect of which he has lodged a caveat, and no more. *In re* CHRISTIE, 24 N.Z.L.R. 558. [*New Zealand.*]

Certificate—Effect of.—In the absence of fraud on the part of a holder of a certificate of title under the Transfer of Land Act, 1893, such certificate is, in the hands of a *bona fide* purchaser for value, indefeasible as to the whole of the land comprised in it unless within the exceptions contained in sec. 68 of the Act. *Held*, that on the facts of this case

there was no misdescription of parcels or boundaries, and no fraud on the part of the plaintiffs, who as purchasers were not bound to go behind the certificate and to enquire as to the title to any portion of the land included in it. WESTERN AUSTRALIAN FRESH FOOD AND ICE CO. *v.* FREECORN, 7 W.A.L.R. 22. [*Western Australia.*]

—— **Easement — Right of way.** — Where there had been twenty years enjoyment of a way as of right prior to the 1st of January, 1886 (the date of the coming into operation of the Land Transfer Act, 1885), and such enjoyment had continued thenceforward to the date of the action. *Held*, that a prescriptive right to the easement had been established, and that the owners of the dominant tenement were entitled to have a memorial of the easement entered upon the certificate of title to the servient tenement. *The New Zealand Loan and Mercantile Agency Co.* v. *The Corporation of Wellington*, 9 N.Z.L.R. 10) followed. SMITH *v.* CHRISTIE, 24 N.Z.L.R. 561; 7 Gaz. L.R. 369. [*New Zealand.*]

—— **Effect of certificate on existence of public road.**—*See* ROAD. MAYOR, &C., OF LOWER HUTT *v.* YEREX, 24 N.Z.L.R. 697. [*New Zealand.*]

—— **Sale under Roads Act.**—*See* ROADS. WATSON *v.* REGISTRAR OF TITLES, 7 W.A.L.R. 45. [*Western Australia.*]

—— **Title—Registered purchaser for value—Fraud.**—The title of a registered purchaser for value from a registered proprietor under the Land Transfer Act can only be defeated by showing actual fraud on his part. Constructive fraud based upon a presumption of knowledge of the law is insufficient. *Moorey* v. *Public Trustee* (20 N.Z.L.R. 288), distinguished. R. *v.* PRICE, 24 N.Z.L.R. 291; 7 Gaz. L.R. 40. [*New Zealand.*]

Mortgage—Power of appointment in fee—What amounts to a valid exercise of the power for the purposes of mortgage.—A married woman being registered as the proprietor of an estate for life in certain land, with a general power of appointment in fee, executed a memorandum of mortgage to secure advances to her husband, in the following terms:—"I, being registered as the holder of a power of appointment over an estate in fee simple . . . . . do hereby appoint by this instrument to be registered under the Act, by way of mortgage to, etc., all my estate and interest as such registered holder of a power of appointment as aforesaid in all that," etc. *Held*, a sufficient execution of the power of appointment in favour of the mortgagees for the purposes of the mortgage. *Ex parte* THE NEWCASTLE BUILDING AND INVESTMENT COMPANY, 5 S.R. 237; 22 W.N. 101. [*New South Wales.*]

—— **Land subject to power of appointment — Foreclosure order — Estate vesting in mortgagee on foreclosure.**—The owner of an estate for life in land, with a general power of appointment in fee, having appointed by way of mortgage. *Held*, that a foreclosure order made by the Registrar-General operated, under s. 62 (2), to vest in the mortgagees all the estate or interest in the land, which the mortgagor intended to pass as security for the mortgage debt, and that the mortgagees were therefore entitled to an estate in fee simple. *Ex parte* NEWCASTLE BUILDING AND INVESTMENT CO., 5 S.R. 237; 22 W.N. 101. [*New South Wales.*]

—— **Covenant not to mortgage—Unregistered mortgage.**—*See* LANDLORD AND TENANT. TATTLEY *v.* COOPER, 7 N.Z. Gaz. L.R. 625. [*New Zealand.*]

Adverse possession—Certificate—Applicant—Proprietor.—The words "applicant proprietor," as used in sec. 67 of the Land Transfer Act, 1885, mean a proprietor who has become a registered proprietor upon an application made by him under ss. 17–30 of the Act. BEALE *v.* TIHEMA TE HAU, 7 N.Z. Gaz. L.R. 622. [*New Zealand.*]

—— **Claim for declaration of title by adverse possession of land under Transfer of Land Act, 1904—Parties.** *See* PRACTICE. THOMSON *v.* BYRNE, 11 A.L.R. (C.N.) 49. [*Victoria.*]

Assurance Fund—Mistake or misfeasance—Claim by Crown.—This was a claim made under sec. 178 of the Land Transfer Act, 1885, against the Assurance Fund by the King, as purchaser of certain land from one James McFarlane. Part of the land purchased, namely, Block No. 4872, was correctly described in the certificate of title by metes and bounds, and by number and name, but the certificate of title stated that the land contained by admeasurement 7334 acres more or less, when in fact it contained only 6830 acres. The purchase was made at so much per acre. The certificate of title was issued under secs. 9 and 10 of the Land Transfer Act Amendment Act, 1880, which require the District Land Registrar to issue a certificate of title upon receipt of an authority from the Governor, and provide that such authority shall contain a description of the land sufficient to identify the same, the correctness of which shall be certified by the Surveyor-General of the colony, and that the authority shall be conclusive evidence to the District Land Registrar of the matters required to be stated therein. An authority was issued in this case, and it stated that the area was 7334 acres. The Surveyor-General certified that the description of the land was sufficient to identify the same. *Held*, by the Court of Appeal, that the King had not sustained loss or damage through any omission, mistake or misfeasance of the Registrar or any of his officers or clerks, and that the action must therefore fail. R. *v.* REGISTRAR-

GENERAL OF LAND, 7 N.Z. Gaz. L.R. 511. [*New Zealand.*]

LANDLORD & TENANT.

Implied tenancy from year to year.—The implication of a tenancy from year to year from the acceptance of rent by a landlord from a tenant holding over after the expiration of his tenancy may be excluded by the other circumstances of the case. THOMAS *v.* THE CROWN, 2 C.L.R. 127; and *see* this case under CONTRACT, *Statute of Frauds*. [*Western Australia.*]

Lease of minerals—Support.—*See* SUPPORT. BLACKBALL COAL CO., LTD. *v.* SHRIVES, 7 N.Z. Gaz. L.R. 35. [*New Zealand.*]

Use and occupation.—In an action for use and occupation, if a question of title arises it can only arise incidentally, and a magistrate would under sec. 34 of the Magistrates' Courts Act, 1893, have jurisdiction to determine it. Once it is shown in an action for use and occupation that the possession of the defendant was adverse the action must fail. THE TUAPEKA HOSPITAL BOARD *v.* CRUICKSHANK AND COLLINS, 24 N.Z.L.R. 744; 8 Gaz. L.R. 81. [*New Zealand.*]

Lease—Usual covenants — Uncertainty.—*Per* Cooper J., in the Supreme Court:—(1) A provision in an agreement for a lease that the lease shall contain all usual and necessary covenants and conditions does not render the agreement uncertain in its terms. Such a provision has now a definite meaning, and imports such covenants and conditions as are necessary for the protection of the parties, and as are usually and properly inserted in leases of the class of property in respect of which the contract is made. (2) The fact that the agreement, in providing for the purchase of parts of the land from time to time by the lessee, left the proportion of the purchase-money for each part to the mutual agreement of the parties did not make the agreement too uncertain to be enforced, especially as a basis upon which the proportion was to be ascertained was provided by the agreement. PEARCE *v.* STEVENS, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176. [*New Zealand.*]

Covenant to purchase—Specific performance.—A lease contained a covenant by the lessees to purchase the fee-simple on the expiration of the term, and a covenant by the lessor, on notice in writing by the lessees that they were ready to pay the purchase-money, to make a good title within one calendar month, and to execute a valid conveyance on payment of the purchase-money and of all rent up to the date of completion, the rent for this purpose to be deemed to accrue from day to day. At the expiration of the lease both parties overlooked the fact that it had terminated, and the lessees continued to pay and the lessor to accept rent. The lessees six months after the expiry of the lease discovered that it had terminated, and they then at once gave notice that they would carry out the purchase. *Held*, (1) that, there being an absolute covenant by the lessees to purchase, strict compliance with the terms was not essential as in the case of a mere option to purchase. (2) That the covenants contemplated payment of the purchase-money and completion of the purchase after the expiration of the lease. (3) That there had been no delay which disentitled the lessees to specific performance. PLIMMER *v.* THE WELLINGTON EDUCATION BOARD, 24 N.Z.L.R. 153. [*New Zealand.*]

Covenant to keep in repair—Construction.—Under a covenant to keep fences in repair a lessee is not bound (1) to keep in repair what is no longer a fence, but simply the remains of one; (2) to take down a fence improperly erected and re-erect it. *Lister* v. *Lane* ([1893] 2 Q.B. 212), followed. Nor is a lessee bound to repair a fence immediately after a landslip, if the effect would be to cause further landslips. A covenant to repair is to be construed reasonably, having regard to the customs of country settlers in such matters. TURKINGTON *v.* TURKINGTON, 7 N.Z. Gaz. L.R. 92, 497. [*New Zealand.*]

Covenant to keep free from noxious weeds.—A covenant by the lessee to keep the land free from scrub, tawhinau, or other noxious growths is limited to growths *ejusdem generis* with those mentioned, and under it the lessee is not bound to clear biddi-biddi or utiwai. TURKINGTON *v.* TURKINGTON, 7 N.Z. Gaz. L.R. 92, 497. [*New Zealand.*]

Forfeiture clause—Collateral instrument—Severability.—By memorandum of lease the plaintiff let to the defendants certain lands and by a collateral instrument bailed to them certain cattle, the rent reserved by the lease being also the consideration for the bailment. By the instrument of bailment it was provided that "if any breach shall have been made in the observance or performance of any of the conditions and agreements contained in this lease the lessor may determine the lease, but without releasing the lessee from rent accrued or accruing, or any breach of covenant which may have occurred." *Held*, that the bailment might be determined, though the lease was not determined. TURKINGTON *v.* TURKINGTON, 7 N.Z. Gaz. L.R. 92, 497. [*New Zealand.*]

—— **Mortgage of term.**—In pursuance of a prior agreement, appellant in consideration of a sum of £600 paid in advance to her by S., granted a lease of an hotel to S. for four years at a rent reserved. According to the agreement the lease was to contain the usual covenants and provisoes in leases of public houses. The lease contained a covenant by S. not to assign or sublet without leave, and a proviso for

re-entry on default in payment of rent, or on the bankruptcy of the lessee, but there was no evidence whether or not such covenants or provisoes were usual in leases of public houses in Tasmania. In order to enable S. to make the payment of £600 to the appellant, he to the knowledge of the appellant borrowed £400 from respondents, and in consideration thereof agreed to execute a mortgage to the respondents of the lease when executed. No legal mortgage of the lease was executed, but respondents became equitable mortgagees by deposit of the lease with a memorandum. Subsequently S. made default both in payment of his rent under the lease, and in repayment of the £400 and interest due to respondents. Appellant refused to accept rent from respondents, and S. was adjudicated bankrupt. On an originating summons taken out by respondents and directed to S. and appellant, asking for an order for possession of the hotel: *Held*, reversing the decision of the Supreme Court of Tasmania, that on the bankruptcy of S. the appellant was entitled to enforce the proviso for forfeiture not only as against S., the lessee, but also as against respondents the equitable mortgagees, and that the mere fact of knowledge by the appellant that the lessee intended to mortgage the term when created did not of itself impose any obligation upon her to protect the future mortgagees' interests, nor act by way of estoppel to prevent the operation of any proviso for forfeiture to their prejudice. *Held, further*, that the Equity Procedure Act (No. 4) (Tasmania), (57 Vict. No. 13), applies only to cases where the rights of the parties, or of those in possession under them, are regulated by a mortgage either legal or equitable, and, therefore, that the legal right of a lessor to re-enter under the conditions of a lease cannot be litigated either on equitable or legal grounds on an originating summons by a mortgagee of the term for foreclosure against the lessee. CAIRNS *v.* BURGESS, 2 C.L.R. 298; 11 A.L.R. 244. [*Tasmania.*]

Covenant not to mortgage.—The execution by a lessee of lands under the Land Transfer Act, 1885, of an instrument purporting to be a mortgage under the Act of his interest in the lands leased, is not a breach of a covenant not to mortgage, so long as the instrument is not registered. TATTLEY *v.* COOPER, 7 N.Z. Gaz. L.R. 625. [*New Zealand.*]

Fixtures.—A building was erected on piles and stumps let into the soil, the building being attached to another building which formed part of the freehold. The former building was attached to the piles and stumps only by its own weight, and could be removed therefrom and from the building to which it was attached without injury to the freehold. *Held*, that there being no evidence that it was erected with the intention that it should become part of the freehold, it was a chattel removable at the will of the tenant. REID *v.* SMITH, 1905 S.R. (Q.) 180; Q.W.N. 48. [*Queensland.*]

Tenements recovery—Dismissal—Insufficient evidence of creation of tenancy—Estoppel.—The dismissal of a summons under sec. 23 of the Landlord and Tenant Act for the summary recovery of possession of a tenement, on the ground that there was insufficient evidence of the creation of the alleged tenancy, is not a determination that there is not and never had been a tenancy, and does not preclude the landlord from giving evidence of a tenancy in a subsequent action. CLISDELL *v.* GIBNEY, 4 S.R. 670; 21 W.N. 237. [*New South Wales.*]

—— **Dismissal of information—Res judicata.**—The dismissal of a summons under sec. 23 of the Landlord and Tenant Act for the summary recovery of possession of a tenement does not operate, as a judgment, to estop the landlord from bringing an action at law, because under sec. 26 a decision in favour of the landlord does not conclude the tenant. CLISDELL *v.* GIBNEY, 4 S.R. 670; 21 W.N. 237. [*New South Wales.*]

—— **Proof of creation of tenancy.**—In a proceeding to recover possession of a tenement under sec. 23 of the Landlord and Tenant Act, the informant must prove the date of the creation of the tenancy. CLISDELL *v.* GIBNEY, 4 S.R. 670; 21 W.N. 237. [*New South Wales.*]

Land tax.—*See* TAXATION. TUCKER *v.* HOWARD SMITH CO., 1904 S.A.L.R. 165. [*South Australia.*]

LEGAL PRACTITIONERS.

See ATTORNEY AND SOLICITOR.

LICENSING.

License—Grocer's license—Insolvency.—*See* BANKRUPTCY AND INSOLVENCY. *In re* JACK; JACK *v.* SMAIL, 2 C.L.R. 684; 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101, 372. [*Victoria.*]

—— **Notice of application.**—The words "before applying for a license" in sec. 28 of the Licensing Act, 1885, mean "before the applicant actually makes his application," and not "before the sitting of the Court for the hearing of applications." The applicant gave notice less than 21 days before the sitting of the Court, but on the meeting of the Licensing Authority asked for an adjournment. The Licensing Authority *held* that it had no jurisdiction to grant an adjournment. A mandamus went to compel them to hear an application for an adjournment *nunc pro tunc*. R. *v.* LICENSING JUSTICES OF TOO-

WOOMBA; *Ex parte* PIERCE, 1905 S.R. (Q.) 185; Q.W.N. 65. [*Queensland.*]

Provisional certificates—Reasons for refusing.—Two applications for provisional certificates in respect of the same locality coming before the justices, they reserved their decision in the application first heard till after the hearing of the second. They then granted the second application and refused the first, on the ground that one license would meet the requirements of the place. *Held*, that this could only be a ground of refusal when a license already existed, or a certificate had already been granted. R. *v.* LICENSING AUTHORITY OF ROCKHAMPTON; *Ex parte* FITZGERALD, 1905 S.R. (Q.) 179; Q.W.N. 64. [*Queensland.*]

—— **Practice.**—Sec. 33 of the Licensing Act, 1885, makes it necessary in the case of applications for provisional certificates that the justices should state their decision in open Court, state the grounds of their refusal, and cause the same to be entered on the records of the Court as provided by sec. 48. R. *v.* LICENSING AUTHORITY OF ROCKHAMPTON; *Ex parte* FITZGERALD, 1905 S.R. (Q.) 179; Q.W.N. 64. [*Queensland.*]

Licensing authority—Member absenting himself.—The expression "absents himself" imports the idea of a voluntary or deliberate absence. Where a statute used the phrase "absents himself . . . . (unless in the case of sickness or other lawful excuse"), and a subsequent statute repealed a large portion of the prior statute, including the section in which such phrase appeared, but re-enacted the clause quoted, omitting the words in brackets, and it appeared that the words "absents himself" had received judicial interpretation as meaning an intentional absence, *held*, that proof of the fact of absence for the requisite number of times consecutively was not sufficient, but it must be shown that all the absences were voluntary or intentional. *In re* HARRIS, 7 N.Z. Gaz. L.R. 572. [*New Zealand.*]

—— **Licensing Act, 1881, sec. 41.**—Sec. 41 of the Licensing Act, 1881, is directory only. BASTINGS *v.* BRUCE LICENSING COMMITTEE, 7 N.Z. Gaz. L.R. 106. [*New Zealand.*]

—— **Returning officer—Remuneration—Contribution.**—A returning officer is not entitled to any remuneration in addition to his ordinary salary for conducting the election of the licensing committee in his electoral district. Even if he were, he could not even by the prerogative writ of mandamus enforce payment until the amount had been fixed by the Crown. The controlling local authority within the meaning of the Alcoholic Liquors Sale Control Act, 1895, cannot, therefore, by paying to a returning officer the sum fixed by him as his remuneration entitle itself to recover contribution in respect of that amount from the other local authorities liable to contribute in respect of an amount legally ascertained. CHAIRMAN, &c., OF WAITEMATA COUNTY *v.* CHAIRMAN, &c., OF HOBSON COUNTY, 8 N.Z. Gaz. L.R. 97. [*New Zealand.*]

—— **Mandamus to Licensing Authority.**—*See* MANDAMUS.

Offences.—Selling without license.—A waiter at an oyster saloon asked for and obtained from a customer 1s. 6d. for a bottle of beer. The customer knew that the proprietor of the saloon intended to retain 6d. of that amount for himself, and knew that only 1s. would be used to purchase the beer from a neighbouring hotel, and had on previous occasions seen the same thing done. *Held*, that there was no sale of liquor by the proprietor to the customer Sec. 165 merely means that in cases for sly grog selling, the prosecution launches its cases by proving a delivery of liquor, and that the justices must convict unless it appears from the evidence that there was no sale. GRAVES *v.* PANAM, 1905 V.L.R. 297; 26 A.L.T. 232; 11 A.L.R. 180. [*Victoria.*]

—— **Contract in Victoria.**—A., a traveller for a firm of merchants carrying on business in New South Wales obtained an order for a case of spirits from a person carrying on business in Victoria. The order was taken by A. to his principals who accepted, executed it, delivered the goods to the purchaser, and A. collected the money in payment for his principals. A. was only authorized to receive and forward the order, he was not authorized to bind his principals to deliver, it was not his practice to accept money for goods when ordered, and he had no authority to undertake that the goods should be supplied. *Held*, that there was no evidence of a contract made by A. within the State of Victoria, and that he could not be convicted under sec. 182 of Act No. 1111. *Quære*, whether an agreement to sell liquor comes within the provisions of sec. 182. FOWLER *v.* MORTON, 1905 V.L.R. 76; FOWLER *v.* THOMPSON, 26 A.L.T. 143. [*Victoria.*]

—— **Sale in prohibited district—Place of sale.**—A brewer who had a brewery at G., in a prohibition district and a business office at M., outside the boundary of such district, received an order for a keg of beer at M., together with authority to appropriate at M. the goods then at the brewery at G., which was a licensed brewery. The brewer made the appropriation, and notified his customer thereof in writing. *Held*, that the sale had been made at M., and as the brewer had no licensed premises there he had committed a breach of sec. 2 of the Beer Duties Act, 1880, Amendment Act, 1886, and that the sale was by a person not licensed to make such sale as the sale could not, under the Beer Duties Acts, and the Licensing Acts, 1881, be legally made by the brewer anywhere but at his

brewery at G. McILVENEY *v.* WHITTINGHAM, 7 N.Z. Gaz. L.R. 648. [*New Zealand.*]

—— **Club.**—Sec. 4 (8) of the Licensing Act, 1890 affords a protection to the servant of a club who is charged with an offence against the Act. Therefore, where a servant of a club was charged with selling liquor without a license, and it was found that the persons to whom the liquor was sold, not being members of the club, by false pretences induced the defendant to believe that they were members, and that there was no negligence on the part of the servant or of the managing body of the club. *Held*, that the information was properly dismissed. *O'Connor v. Price* (10 A.L.T. 151; 14 V.L.R. 946) followed. GRAVES *v.* WILLIAMS, 1905 V.L.R. 215; 26 A.L.T. 189; 11 A.L.R. 98. [*Victoria.*]

—— **Suffering gaming.**—A publican locked up his premises at 11 p.m. and retired to bed leaving no one in charge. At 12.30 a.m. the police entered the hotel and found several persons, some of whom were boarders, gambling. *Held*, that he was wrongly convicted of suffering gaming. *Ex parte* LAMBERT, 22 W.N. 130. [*New South Wales.*]

Where licensed hotelkeeper permitted a party of four men to play in his licensed premises a game of euchre, the losers to pay for the drinks to be supplied to the party, and drinks were accordingly supplied to each of the men, and the losers at the game paid for the drinks, *held*, that the game so played constituted "gambling" within the meaning of sec. 44 of the Licensing Acts Amendment Act, 1904, and that the licensee had been properly convicted of a breach of such section. Where one of the elements of a particular game is the element of chance, and where that game is played for money or money's worth, playing at that game is "gambling" within the meaning of the abovementioned section. FULLER *v.* FOUHY, 24 N.Z.L.R. 753; 7 Gaz. L.R. 574. [*New Zealand.*]

—— **Prohibited hours—Person to whom liquor supplied.**—Two persons, H. and C., went into a hotel together, and obtained liquor, during prohibited hours. C. paid for the liquor, but the magistrate apparently misread the notes of evidence, and assuming that H. had paid, found that there had been a sale to H. On appeal, *held*, that although H. consumed the liquor, there was no evidence that he ordered it, and the conviction could not stand. The specific ground that the sale was to H., not C., was not raised. The general ground stated was that the decision of the magistrate was erroneous in point of fact, and against the weight of evidence. *Held*, that the defect in setting forth the grounds of appeal could be corrected under sec. 255 of the Justices of the Peace Act, 1882. PAYNE *v.* JOHNSTON, 7 N.Z. Gaz. L.R. 102. [*New Zealand.*]

—— **Evidence—Costs.**—Upon a prosecution for selling liquor on licensed premises at prohibited hours the only evidence was that a boy was seen leaving the licensed premises after midnight with a bottle of beer. The boy was not called and no evidence was given for the defence. The magistrate convicted the defendant. *Held*, that there was no evidence of delivery of the liquor under sec. 113 and that the omission to call the boy was improper, and the appeal was allowed with costs. MCDONOUGH *v.* CAVANAGH, 22 W.N. 151. [*New South Wales.*]

—— **Bona fide traveller.**—Case stated by the acting-police magistrate, Perth. At a Police Court a complaint was preferred by W. D. Ryan, under the Wines Beer and Spirit Sale Act, 1880 (44 Vic. No. 9), sec. 61, as amended by Acts of 1886 (50 Vic. No. 26), sec. 14, and 1898 (62 Vic. No. 34), sec. 3, against W. J. Holmes, charging him that being the holder of a publican's license for the premises known as the Bohemia Hotel, Perth, he permitted liquor to be sold on Sunday to persons other than *bona fide* travellers or lodgers. This complaint was heard before the magistrate on July 22, 1904, with the result that the defendant was fined £1 and ordered to pay 12s. costs. From the case stated by the magistrate, it appeared that the following facts had been proved at the hearing:—(1) That the appellant was the licensee of the Bohemia Hotel, Perth; (2) that on Sunday, July 17, 1904, two men were supplied with liquor at the hotel; (3) that before supplying the men an employee of the appellant put to each of them separately the following questions, "Are you a *bona fide* traveller?" and "Where did you sleep last night?" and in answer each of the two men said, "Yes, at Fremantle." (4) that the appellant was present and heard these questions and answers; (5) that neither of the men supplied with liquor was known to the appellant, nor had he seen them before; (6) that the men were not in fact *bona fide* travellers. On the part of the appellant it was contended that he had satisfied himself that the men were *bona fide* travellers. On the part of the respondent it was contended that the appellant should have made further enquiries from the men and that the questions put were insufficient. The magistrate was satisfied that the appellant truly believed that the men supplied were *bona fide* travellers, but in his opinion the appellant had not taken reasonable precaution to ascertain whether or not the men were *bona fide* travellers. The question for the Full Court was whether upon the above statement of facts, in deciding that the appellant had committed a breach of the Licensing Act, the magistrate came to the correct decision in point of law. *Held*, that the questions put by the appellant and the answers thereto were insufficient to justify his conclusion that the men were *bona fide* travellers, and he having failed to satisfy the onus which was upon him, had been rightly convicted. RYAN *v.* HOLMES, 7 W.A. L.R. 113. [*Western Australia.*]

A man who in fact lived within two miles

of a hotel at the Upper Hutt, though this was not known to the barman, applied at the hotel to be supplied with liquor on a Sunday. He had arrived on horseback. The barman asked him whether he was a traveller. He replied that he had just come from a funeral at the Lower Hutt, and that he was fourteen miles away last night, and that he reckoned that he was one. He had in fact been fourteen miles away the last night, but he had returned and slept at his own home, within two miles of the hotel. The barman did not ask him where he had slept or where he lived. He was supplied with liquor. *Held*, by Stout C.J. and Cooper J. that the barman had not taken all reasonable precautions to ascertain whether or not he was a *bona fide* traveller. *Semble* (*per* Stout C.J.) that, even if he had slept three miles from the hotel the night before, if he had reached his home he had ceased to be a traveller. McGRATH *v.* PATTON, 24 N.Z.L.R. 527. [*New Zealand.*]

The permission given by the Licensing Acts authorising the sale of liquor during prohibited hours to a *bona fide* traveller is revoked by, sec. 38 of the Licensing Acts Amendment Act, 1904. It is no defence to an information, charging a licensed hotelkeeper with selling liquor in his licensed premises during a time at which licensed premises are directed to be closed, to prove that the purchaser was a *bona fide* traveller, or that the licensee truly believed that the purchaser was so, and that he took all reasonable precautions to ascertain whether or not the purchaser was such a traveller. *Semble*, that in order to ascertain whether a person, justifying his presence on licensed premises during prohibited hours as a "*bona fide* traveller," answers to such description, the Court can look to sec. 157 of the Licensing Act, 1881, as affording a substantial definition of the above term. BROOKING *v.* CRAWFORD, 24 N.Z.L.R. 738; 7 Gaz. L.R. 579. [*New Zealand.*]

—— **Shutting and locking.**—The word "locked" in sec. 143 of Act No. 1111 means securely fastened. A door leading from the bar was shut, and the key was in the door on the outside. The fastening on the door was one without a handle, and all that had to be done to open the door was to give the key a half-turn. The key could also be used to shoot a bolt. *Held*, that the door was not "locked" within the meaning of the section. GRAHAM *v.* GUBBINS, 26 A.L.T. 181; 11 A.L.R. 81. [*Victoria.*]

—— **Being drunk while in charge of carriage.**—Sec. 197 of the Licensing Act, 1890, which provides that "it shall be the duty of the inspector of Licensing Districts to take proceedings for the recovery of all penalties for offences against this Act in his district where no other provision is made in that behalf," does not take away the right of a member of the public to institute proceedings in respect of an offence created by the Act which is an offence against the whole community. *Held*, therefore, that a police constable might lay an information in respect of an offence created by sec. 153 of the Licensing Act 1890, *e.g.*, being drunk while in charge of a carriage in a public place. PROUDFOOT *v.* POWER, 1905 V.L.R. 610; 27 A.L.T. 84; 11 A.L.R. 41. [*Victoria.*]

—— **Allowing drunkenness on licensed premises.**—Where a licensee has no duty, contractual or moral, to allow a drunken man to remain on his premises, and does allow him to remain, he is guilty of the offence of allowing drunkenness to take place on the premises. If a licensee is absent from his premises, but a barmaid has a general authority from him to serve liquor and control the bar on his behalf, and if a man comes on to the licensed premises drunk, it is the duty of the barmaid to have him put out, and merely telling him to leave is not a performance of that duty. *Edmunds* v. *James* ([1892] 1 Q.B. 18); *Hope* v. *Warburton* ([1892] 2 Q.B. 134; 61 L.J.M.C. 147; 56 J.P. 328); *Worth* v. *Brown* (40 S.J. 515; 62 J.P. 658), followed; *Faber* v. *Dwyer* (3 Gaz. .RL. 471), disapproved. McROBIE *v.* BOWDEN, 24 N.Z.L.R. 10; 7 Gaz. L.R. 118. [*New Zealand.*]

—— **Alcoholic liquors—Delivery beyond district.**—A brewer carrying on his business in a no-license district, who, on a sale of liquor of his own manufacture, at the request of a purchaser at the time of sale, undertakes to hand the liquor to a person who undertakes to deliver it outside such district, sells the liquor to be delivered "beyond the limits of such district," and comes within sub-sec. 6 of sec. 33 of the Alcoholic Liquors Sale Control Act, 1893, Amendment Act, 1895. MACKENZIE *v.* WHITTINGHAM, 24 N.Z.L.R. 620; 7 Gaz. L.R. 650. [*New Zealand.*]

—— **Selling liquor to intoxicated person.**—An innkeeper who supplies to a person in a state of intoxication liquor ordered and paid for by a sober man, not acting as agent for the drunken man in connection therewith, does not commit the offence of selling liquor to a person in a state of intoxication. *Scatchard* v. *Johnson* (57 L.J.M.C. 41), considered and distinguished. HOULDSWORTH *v.* FAIRHALL, 7 N.Z.L.R. Gaz. 515. [*New Zealand.*]

—— **Delivery of uncorked bottle to person under 16 years of age.**—What amounts to. GRAVES *v.* DAVIES, 11 A.L.R. (C.N.) 42. [*Victoria.*]

Prohibitory order—Notice of intention to apply.—LENNOX *v.* WHITEHEAD, 11 A.L.R. (C.N.) 21. [*Victoria.*]

—— **Application.**—An application under sec. 125 for a prohibitory order need not be made by the Inspector of a Licensing District. KRUMMEL *v.* KIDD, 1905 V.L.R. 193; 26 A.L.T. 131. [*Victoria.*]

—— **Previous conviction—Injury to health.** —*Quære*, whether in applications under sec. 125, evidence that the defendant had been previously convicted for drunkenness is admissible. The fact of injury to health can be proved by laymen, and need not be proved by medical or other expert evidence. KRUMMEL *v.* KIDD, 1905 V.L.R. 193; 26 A.L.T. 131. [*Victoria.*]

LIEN.

On company shares.—*See* COMPANY. *In re* SOUTHLAND FROZEN MEAT CO., 24 N.Z.L.R. 734; 8 Gaz. L.R. 77. [*New Zealand.*]

Under Mining Acts.—*See* MINING.

Contractor's and workmen's lien—Bona fide purchaser without notice.—J.M., husband of C.M., contracted with W. and others for the execution of certain work on his wife's land, the title to which was under the Land Transfer Act, 1885. After W. and his partners had become entitled to a lien, but before the time within which they could register such a lieu under the provisions of the Contractors' and Workmen's Lien Act, 1892, had elapsed, the wife sold the land to H., a *bona fide* purchaser for value, without notice of the lien. The transfer to H. was duly completed and registered in accordance with the provisions of the Land Transfer Act. Subsequently to the completion of registration of the transfer to H. of the land, but within the time during which a lien could be enforced, W. and his partners took the necessary steps to enforce their claim. The magistrate who heard the application held that there was sufficient evidence to show that the work had been done with the privity of C.M., the owner of the land; that she was an "employer" within the meaning of the Contractors' and Workmen's Lien Act, 1892; and that W. and his partners were entitled to have their lien enforced against the land. *Held*, on appeal, that, though the magistrate was justified in his finding as to the work having been done with the privity and consent of the wife, and as to her being an "employer" within the meaning of the statute, and notwithstanding that the lien was created by statute and not by the act merely of the parties, yet H., being a *bona fide* purchaser without notice of the lien, and having duly completed his title by registration, the lien could not be enforced against the land. MCCONOCHIE *v.* WEBB, 24 N.Z.L.R. 229. [*New Zealand.*]

—— **Employer — Mortgage.** — Where an agreement to mortgage certain property has been given, and subsequently the work has been done on the same property in respect of which a lien under the Contractors' and Workmen's Lien Act, 1892, has attached, but before registration of the lien a caveat in Form L in the Second Schedule of the Land Transfer Act, 1885, has been registered against the land by the person claiming under the agreement to mortgage, such person does not come within the definition of the word "employer" in sec. 2 of the Contractors' and Workmen's Lien Act, 1892, as his rights were acquired prior to the commencement of the work, and a lien is given only upon the whole interest of the employer in the land, and not upon the interest of any one who does not come within the definition of "employer." Sec. 6 of the Contractors' and Workmen's Lien Act, 1892, is intended to protect a mortgagee who has got on the register before the registration of a lien even if the mortgage was executed after the lien had attached, and a contractor cannot by inference obtain under that section a greater or more effective lien than is expressly given him by sec. 3 of the Act. THE COMMERCIAL PROPERTY AND FINANCE CO., LTD. *v.* THE OFFICIAL ASSIGNEE OF WAGHORN AND A. & T. BURT, LTD., 24 N.Z.L.R. 655; 7 Gaz. L.R. 652. [*New Zealand.*]

—— **Single continuing contract.**—The contractor for the erection of a building gave an order to timber-merchants in October, 1903, for certain timber required for the building, and the timber-merchants undertook to supply the order. The bulk of the order was supplied during November, 1903; but two pieces of timber required for a verandah, and comprised in the original order, were not supplied until the 9th of February, 1902. The timber-merchants, on the 10th February, 1904, gave notice, under sec. 9 of the Contractors' and Workmen's Lien Act, 1892, that they intended to claim a charge for the whole amount due them upon moneys payable by the employer to the contractor. *Held*, that there was one order not completed till February, and consequently the supply was in pursuance of a single continuing contract, and the notice was in time as regards the whole supply. HALLEY & EWING *v.* SEARLE, 24 N.Z.L.R. 151. [*New Zealand.*]

—— **Distribution—Priorities.**—In the distribution of the moneys retained by an employer or contractor in pursuance of sec. 12 of the Contractors' and Workmen's Lien Act, 1892, the only priorities recognised are those created by sec. 7 of the said Act. The members of each of the classes mentioned in sec. 7 stand as between themselves in the same order of priority. MCANDREW *v.* TUDEHOPE, 7 N.Z. Gaz. L.R. 556. [*New Zealand.*]

The moneys which an employer or contractor is required to retain upon receipt of a notice of lien or charge are in addition to and not in substitution for the moneys which by virtue of the statute alone he must retain in hand under sec. 12. Nor can a claimant under secs. 11 and 14 claim the benefit of those sections unless there are moneys immediately payable by the employer or contractor under the contract beyond the sum required to be retained in hand under sec. 12,

for the enforcement of his lien or charge under circumstances which would defeat the provisions of sec. 12. McANDREW *v.* TUDEHOPE, 7 N.Z. Gaz. L.R. 556. [*New Zealand.*]

With respect to the moneys retained in hand in pursuance of sec. 11 of the Contractors' and Workmen's Lien Act, 1892, *semble*, that the claimant acquires an absolute lien or charge thereon. McANDREW AND OTHERS *v.* TUDEHOPE AND ANOTHER, 7 N.Z. Gaz. L.R. 556. [*New Zealand.*]

—— **"Work."**—The effect of the interpretation clause of the Contractors' and Workmen's Lien Act, 1892, is to extend and not to limit the meaning of the word "work." and that word in sec. 3 covers not only what is included in "work" by the interpretation clause, but also anything which would ordinarily be described as work. In this case the Court *held* that bush-felling and bush-clearing was work within the meaning of sec. 3 of the Act. The governing words in sec. 3 of the said Act are:—"Who does or procures to be done any work upon or in connection with," and then follow the various classes of work, *viz.*, (a) on any land; (b) on any building; (c) on any other structure; (d) on any permanent improvement. HAYNES *v.* M'KILLOP, 7 N.Z. Gaz. L.R. 478. [*New Zealand.*]

—— **Nonsuit—Appeal.**—A non-suit is a decision from which an appeal lies under sec. 17 of the Act. HAYNES *v.* McKILLOP, 7 N.Z. Gaz. L.R. 478. [*New Zealand.*]

LIMITATIONS (STATUTE OF).

Rates. *See* JUSTICES. BEECHWORTH, PRESIDENT &c., OF SHIRE OF, *v.* SHOEBRIDGE, 1905 V.L.R. 673; 27 A.L.T. 73; 11 A.L.R. 386. [*Victoria.*]

Breach of trust. *See* TRUST AND TRUSTEE. EQUITY TRUSTEES AND AGENCY CO. *v.* FENWICK, 1905 V.L.R. 154; 26 A.L.T. 137; 11 A.L.R. 15. [*Victoria.*]

Debt owing by executor.—Where one of two executors was indebted to the testator at the time of his death, the debt is an asset of the testator in the hands of that executor. *Ingle* v. *Richards* (28 Beav. 366), followed. Sec. 29 of the Trusts Act, 1896, excludes that executor from availing himself of the Statute of Limitations. ELLIOTT *v.* CAMPBELL, 1905 V.L.R. 596; 27 A.L.T. 69, 128; 11 A.L.R. 331. [*Victoria.*]

Commencement of — Calls — Forfeited shares.—*See* COMPANY. GILLESPIE & Co. *v.* REID, 1905 V.L.R. 101; 26 A.L.T. 154; 11 A.L.R. 12. [*Victoria.*]

Possession by caretaker.—The possession of a servant, or caretaker, placed by the owner in occupation of land, is that of the owner himself, and therefore, during the continuance of such relationship, the Statute of Limitations does not run against the owner. *McCracken* v. *Woods* (4 V.L.R. (L) 222), followed. Where a person, claiming to be entitled to land by adverse possession, went into occupation thereof as a servant, or caretaker, of the owner, the onus is upon him to prove when and under what circumstances his possession became a possession for himself. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

Mortgage by owner.—A mortgage executed by the owner will not stop possession of an occupant of land so as to prevent his title under the Statute of Limitations from maturing. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

Unclaimed Land Act—Adverse possession.—Sec. 14 of the Unclaimed Land Act, 1894, does not empower the Court to disregard the rule of law that a claim of title by continuous adverse possession for more than twenty years cannot be supported where the evidence shows that at the time when the adverse possession commenced, the legal owner of the land had a foreign domicile, and was absent beyond seas, because the presumption is that he remained absent. The onus is upon the claimant to prove the facts necessary to make the possession effective, and sec. 14 deals only with rules of evidence. *In re* UNCLAIMED LAND ACT. 1894; *Ex parte* CONWAY, 7 N.Z. Gaz. L.R. 386. [*New Zealand.*]

LIQUOR.

See LICENSING.

Sale of, under Public Health Act.—*See* PUBLIC HEALTH. HUGHES *v.* WILSON, 22 W.N. 32. [*New South Wales.*]

LOCAL COURT.

See SMALL DEBTS RECOVERY.

LOCAL GOVERNMENT.

Rates—Equality.—The meaning of sec. 149 of the Counties Act, 1886, is that the council in striking the rate, shall take into consideration the requirements of each riding, and that if in any riding any appreciable expenditure is required which is not general expenditure, it shall strike a higher rate in that riding. It

is not, however, a condition precedent to the striking of the rate that any formal estimate or account shall be made of the proposed expenditure in each riding. The cost of collecting the general rate is by sec. 149, par. 2, made a charge upon the rate collected in each riding, but that cost is hardly likely to vary to such an extent as to require the general rate to vary in amount in the different ridings. If in the estimate of receipts and expenditure made by a county council for the purpose of complying with sec. 145 of the Counties Act, 1886, all the expenditure provided for is general expenditure as defined by that section, that expenditure must, by virtue of sec. 149, par. 2 of the said Act, be borne by each riding in the proportion which the rates received in respect of the ratable property in such riding bear to the total general expenditure, and the rate required to meet the share of each riding in such general expenditure must be uniform throughout the county. CRAWFORD *v.* CHAIRMAN, ETC. OF HUTT COUNTY; CHAIRMAN, ETC., OF HUTT COUNTY *v.* CRAWFORD, 7 N.Z. Gaz. L.R. 299, 548. [*New Zealand.*]

—— **Net annual value.**—The probable annual average expense referred to in sec. 252 (2) of the Local Government Act, 1903 (No. 1893), may be calculated by ascertaining the number of years in the probable life of the property which will require renewing after a time, and the capital value of such property, and then dividing that capital value by that number of years. In computing under sec. 252 (2) of the above Act, the net annual value of the property ratable, it is allowable to deduct the bulk yearly sum which represents the probable annual average expense necessary to maintain the property in a state to command the rent at which such property might reasonably be expected to let from year to year. The sum to be deducted annually need not be calculated on the principle of a sinking fund consisting of such a sum set aside each year as, invested at interest, will in a given number of years together with the interest amount to the total of the moneys expended in each of the given years to maintain the property in a state to command such rent. ELECTRIC SUPPLY CO. OF VICTORIA *v.* MAYOR, &C., OF BENDIGO, 1905 V.L.R. 169; 26 A.L.T. 184; 11 A.L.R. 120. [*Victoria.*]

—— **Deductions.**—In computing under sec. 252 (2) of the Local Government Act, 1903 (No. 1893), the net annual value of the property ratable, expenses of the following repairs are allowable deductions when such expenses are necessary to maintain such property in a state to command the rent at which such property might reasonably be expected to let from year to year. Expense of repairs effected by the tenant in respect of plant, which he, as tenant, had to supply, and expense of repairs to the building, which, as between landlord and tenant have to be effected by the landlord, as contradistinguished from tenants' repairs. In addition to such deductions it is allowable to deduct yearly such an annual average sum as will together with the interest thereon provide a sinking fund for the reconstruction or renewal of the perishable portion of such ratable property at the termination of the average life of its component parts. A deduction may also be allowed for money intended to be expended in making an increase in the amount of insurance upon such property, where such increase is prudent and reasonable. BENDIGO GAS CO. *v.* MAYOR OF BENDIGO, 26 A.L.T. 182. [*Victoria.*]

—— **Sec. 246—Charitable purposes.**—The words "charitable purposes" in sec. 246 of the Local Government Act, 1890, are not used in their legal technical meaning, but in their more limited ordinary sense. *Held*, therefore, that land held upon trust for the purposes of an affiliated college is not exempted by that section from rating as being "land used exclusively for charitable purposes." Buildings were placed on the land and were used as an affiliated college which was carried on at a loss, and it was found that under existing economic conditions an affiliated college could not be carried on at a profit. *Held*, that the land should be assessed at a nominal sum only. TRUSTEES OF QUEEN'S COLLEGE *v* MAYOR, &C., OF CITY OF MELBOURNE, 1905 V.L.R. 247; 26 A.L.T. 191; 11 A.L.R. 103. [*Victoria.*]

—— **Sale for unpaid rates—Publication of particulars.**—Sec. 243 (2) of the Local Authorities Act, 1902, is imperative and not directory only, and the public notification of the prescribed particulars is a condition precedent to the validity of a sale of land for unpaid rates. Imperative and directory provisions considered. *In re* CHURCH'S CAVEAT, 1905 S.R. (Q.) 201; Q.W.N. 67. [*Queensland.*]

—— **Rate appeals—Costs.**—*See* ELECTRIC SUPPLY CO. OF VICTORIA *v.* MAYOR, &C., OF BENDIGO, 27 A.L.T. Supp. 4; 11 A.L.R. (C.N.) 53. [*Victoria.*]

Sale of flax in road district.—Where a county council sells the flax growing on a certain road reserve, which, although in the boundaries of the county, is in a road district, and is not under the control of the council, the contract is *ultra vires* and void and the council is bound to restore to the person to whom the flax was sold the money he paid for it, but he is not entitled to receive interest on such money, or to recover damages for loss sustained by the contract being void. MCEWAN *v.* THE CHAIRMAN, COUNCILLORS, AND INHABITANTS OF THE COUNTY OF SOUTHLAND, 24 N.Z.L.R. 652; 7 Gaz. L.R. 538. [*New Zealand.*]

Mandamus to issue traffic license.—If a license to carry on heavy traffic upon a road is wrongfully refused by the clerk to a county council, the applicant can himself apply for a mandamus, and the Attorney-General need

not be a party to the proceedings. Although the clerk has a public duty to perform, it is one, the breach of which affects the applicant alone. HANLON *v.* THE CHAIRMAN, &c., OF THE POHANGINA COUNTY, 24 N.Z.L.R. 629; 7 Gaz. L.R. 80. [*New Zealand.*]

Certificate of auditor.—The certificate of the auditor, mentioned in the Counties Act, 1886, sec. 183, as to the correctness of the county treasurer's yearly balance-sheet and statements, is not a certificate in absolute terms of the correctness of such balance sheet, but merely a report by him to be submitted to the county council. Such qualified certificate does not protect the treasurer or the local body from any consequences of any inaccuracies. Mandamus granted to compel the defendant to certify, in terms of the Act, either wholly or with such exceptions as he shall think fit, to the correctness of such yearly balance-sheet and statements. COCHRANE *v.* THE CONTROLLER AND AUDITOR-GENERAL OF NEW ZEALAND, 24 N.Z.L.R. 211; 7 Gaz. L.R. 297. [*New Zealand.*]

Petition to council—Special order.—Sec. 5 (1) of the Counties Act, 1886 (providing the mode of verifying petitions to the county council), is mandatory, and its provisions must be strictly complied with. The jurisdiction of a county council to pass a special order under sec. 53 of the Counties Act, 1886, depends upon the consent of the requisite majority of the ratepayers at the time when the order is made. If the signatures of petitioning ratepayers are, by petition before the order is made, withdrawn, and the number remaining on the original petition is less than the requisite majority, the council has no power to disregard such withdrawal and act on the original petition. *In re* THE COUNTIES ACT, 1886; *Ex parte* WRIGHT, 7 N.Z.L.R. 383. [*New Zealand.*]

By-law—Notice to dip—Authority to travel.—Respondent was prosecuted under a by-law made under the Local Authorities Act, 1902 (Queensland). By clause 2 of the by-law, it was provided that "no owner of stock shall commence to travel the same into, out of, or through the shire unless he has obtained from an inspector a permit authorizing him so to do." Before commencing to travel stock, the owner was required to give to the inspector seven days' notice in writing of his intention. Respondent received notice from the inspector given under another clause of the by-law, requiring him to dip certain of his cattle within seven days. He thereupon, without any permit, but intending to comply with the notice, took the cattle out of the shire to a dip in another shire. *Held*, that the notice to dip did not amount to a permit to travel out of the shire, and that the respondent having taken the cattle out of the shire without a permit was guilty of an offence under the by-law. Decision of the Supreme Court of Queensland: *Beetham* v. *Tremearne* ([1905] S.R. (Q.) 93), reversed. BEETHAM *v.* TREMEARNE, 2 C.L.R. 582; 1905 S.R. (Q.) 93; Q.W.N. 36. (*Queensland.*]

—— **Traffic regulation.**—Sec. 130 of the Public Works Act, 1894, authorises a county council to make by-laws in respect of all or any of the roads under its care, control, or management, providing that heavy traffic of all or any kinds shall cease during the whole or any part of the months of May, June, July, August and September. The county council of Wairarapa South made a by-law to the effect that no person should engage in heavy traffic of certain kinds on any roads during the whole or any part of the above-named months, as the council should by resolution order. *Held*, that the by-law was invalid, as leaving to subsequent resolution the specification of the roads to be affected and of the period (in the months named) during which they were to be closed to heavy traffic. COLLINS *v.* WOLTERS, 24 N.Z.L.R. 499; 7 Gaz. L.R. 63. *But see* MUNICIPALITY. MUNT COTTRELL & CO. *v.* REYNOLDS, 24 N.Z.L.R. 417. [*New Zealand.*]

—— **Breach of by-law—Authority to prosecute.**—At the hearing of a complaint for breach of a shire council by-law, the plaintiff gave uncontradicted oral evidence that he was authorised to prosecute. The magistrate dismissed the complaint on the ground that no written authority to prosecute was produced. On case stated, *held*, that authority to prosecute must be presumed under the Local Authorities Act, 1902, sec. 380 (2). MCCLURE *v.* CANNING, 1905 Q.W.N. 19. [*Queensland.*]

—— **Publication.**—Where the very words of a by-law were not published, but only what purported to be its meaning and result or legal effect, *held*, that the notice published did not properly set out the by-law passed, and could not be said to be a compliance with sub-sec. 4 of sec. 304 of the Counties Act, 1886. A by-law is invalid if that sub-sec. has not been complied with. HANLON *v.* THE CHAIRMAN, COUNCILLORS, AND INHABITANTS OF THE POHANGINA COUNTY, 24 N.Z.L.R. 629; 7 Gaz. L.R. 80. [*New Zealand.*]

Municipality.—*See* MUNICIPALITY.

LOCKE KING'S ACT.

See MORTGAGE.

LODGING HOUSE.

See DEFAMATION. MILLER *v.* ARMSTRONG, 8 N.Z. Gaz. L.R. 76. [*New Zealand.*]

LOTTERY.

See GAMING AND WAGERING.

LUNACY.

Jurisdiction of the Lunacy Court to protect property.—A petition, duly verified, having been presented and filed under sec. 103 of the Lunacy Act, 1898, the Court on an *ex parte* application by the petitioner, made an order restraining the alleged incapable person, until the hearing of the petition, from withdrawing any moneys, securities, or evidences of title standing to his credit or deposited by him in a certain bank, it appearing that he was intending to withdraw the same. *In re* S.B., 22 W.N. 144. [*New South Wales.*]

Petition—Affidavits of medical men.—Practice.—Observations on the form of affidavits of medical men in support of petitions under secs. 102 and 103 respectively of the Lunacy Act, 1898. *In re* R.G., 22 W.N. 140. [*New South Wales.*]

Service—Insufficient notcie—Re-service.—Where a petition under sec. 103 of the Lunacy Act, 1898, was served on the alleged incapable person more than seven clear days before the hearing, but the affidavits in support were only served four clear days before the hearing, and there was no appearance on behalf of the alleged incapable person, the Court refused to avail itself of its powers under Lunacy Rule 4 and to abridge the length of notice required under Rule 12, but directed that the petition and affidavits to be re-served *de novo*. *In re* A.H., 22 W.N. 68. [*New South Wales.*]

Maintenance—Crown.—Sums expended for maintenance of an insane patient out of funds belonging to the Consolidated Revenue, constitute a debt due to the Crown. *Howard* v. *Digby* (2 Cl. & F. 663); *In re Watson* ([1899] 1 Ch. 72); *In re Clabbon* ([1904] 2 Ch. 465); *Re Brooks* (21 W.N. 4), followed. *In the estate of* MATTSON, 22 W.N. 159. [*New South Wales.*]

Imprisonment of lunatic—Vexatious action — Stay of proceedings. — *See* PRACTICE. MCLAUGHLIN *v.* WESTGARTH, 4 S.R. 660; 21 W.N. 225. [*New South Wales.*]

Resumption of land belonging to a lunatic.—Costs.—*See* PUBLIC WORKS. *Re* MCMILLAN, 5 S.R. 350; 22 W.N. 16, 75. [*New South Wales.*]

MAINTENANCE.

See CHAMPERTY—DESERTED WIVES AND CHILDREN—INFANT.

MALICIOUS PROSECUTION.

Want of reasonable and probable cause—Prosecution for libel—Admissibility of evidence to show truth and public benefit.—The plaintiff was prosecuted criminally for libel by the defendant, and committed for trial, but the Attorney-General refused to file a bill. In an action by the plaintiff for malicious prosecution, *held*, that evidence that the libel was true, and that it was for the public benefit that it should be published, was admissible to show want of reasonable and probable cause, notwithstanding that the prosecution had never reached the stage at which a plea of justification could have been pleaded. GLISSAN *v.* CROWLEY, 5 S.R. 219; 22 W.N. 100. *But see* CROWLEY *v.* GLISSAN, 2 C.L.R. 744. [*New South Wales.*]

Reasonable cause for prosecution for libel—Knowledge of plaintiff of truth and public benefit.—In an action for malicious prosecution for defamation the plaintiff, in order to establish the absence of reasonable and probable cause, must prove that the facts known to the defendant at the time when he initiated the prosecution, were inconsistent with an honest belief upon reasonable grounds that the plaintiff could not establish a defence to the charge. Sec. 12 of the Defamation Act, (N.S.W.) No. 22 of 1901, makes it a criminal offence to maliciously publish a defamatory libel. Sec. 13 provides that on the trial of an indictment or information for such libel, the truth of the defamatory matter may be inquired into, but shall not amount to a defence unless it was for the public benefit that the defamatory matter should be published. Such a defence must be specially pleaded. The respondent was prosecuted by the appellant for criminal libel, and was committed for trial, but the Attorney-General declined to file a bill. The libel was contained in a private letter alleging corruption on the part of the appellant and the directors of a company of which the appellant was general manager. The respondent brought an action against the appellant for malicious prosecution, and, in support of the allegation of corruption, gave evidence of facts which must have been within the knowledge of the appellant when he initiated the prosecution. These facts were open to the construction put upon them by the respondent in the libel, but were also reasonably capable of a construction more favourable to the appellant. The jury found for the plaintiff. *Held*, that, inasmuch as the facts proved by the respondent were not inconsistent with the existence in the appellant's mind of an honest belief on reasonable grounds that the charges in the libel were not justifiable and that the respondent was therefore guilty of the offence of libel, the respondent had failed to discharge the onus cast upon him, as plaintiff, of proving an absence of reasonable

and probable cause, and should have been non-suited. *Abrath* v. *North-Eastern Railway* Co. (11 Q.B.D. 440; 11 App. Cas. 247); and *Cox* v. *English, Scottish and Australian Bank* ([1905] A.C. 168) followed. *Held, also*, that the plaintiff in the action was entitled to give evidence which would have supported a plea of justification under sec. 13 of the Defamation Act, 1902. CROWLEY *v.* GLISSAN, 2 C.L.R. 744. [*New South Wales.*]

Evidence.—In an action for malicious prosecution the evidence given by the defendant at the prosecution of the plaintiff is admissible in evidence against the defendant as an admission by him. The whole of the evidence given at the prosecution can be put in by the plaintiff to prove his case, and to show that the defendant was not warranted in commencing the prosecution. *Henderson* v. *Allen* (1 Gaz. L.R. 113, 115), distinguished. MICKLESON *v.* SMALL 24 N.Z.L.R. 831; 7 Gaz. L.R. 452. [*New Zealand.*]

MANDAMUS.

Opportunity to show cause.—Before a person or a body can be compelled by mandamus to do an act, such person or body must have an opportunity to show cause why he or they should not do it. BASTINGS *v.* BRUCE LICENSING COMMITTEE, 7 N.Z. Gaz. L.R. 106. [*New Zealand.*]

Where writ useless.—Where a magistrate has refused to exercise jurisdiction on the ground that a question of title is involved, and upon the undisputed facts it is clear that the plaintiff must have failed on the merits, he cannot come to the Supreme Court for a mandamus to compel the magistrate to determine the question. THE TUAPEKA HOSPITAL BOARD *v.* CRUICKSHANK AND COLLINS, 24 N.Z.L.R. 744; 8 Gaz. L.R. 81. [*New Zealand.*]

Consideration of extraneous matters—Erroneous decision.—Where the magistrates erroneously decided that a section of the Act requiring a certain notice to be given, applied to the case they were hearing and dismissed the case because the notice had not been given, the Full Court granted a mandamus. *Ex parte* REED, 5 S.R. 328; 22 W.N. 78. [*New South Wales.*]

Local authority—To compel issue of traffic license.—*See* LOCAL GOVERNMENT. HANLON *v.* CHAIRMAN, &c., OF POHANGINA COUNTY, 24 N.Z.L.R. 629; 7 Gaz. L.R. 80. [*New Zealand.*]

—— **To compel auditor to certify.**—*See* LOCAL GOVERNMENT. COCHRANE *v.* CONTROLLER AND AUDITOR-GENERAL OF NEW ZEALAND, 24 N.Z.L.R. 211; 7 Gaz. L.R. 297. [*New Zealand.*]

To Compensation Court.—*See* PUBLIC WORKS.

To Veterinary Surgeons' Board.—*See* VETERINARY SURGEONS. R. *v.* KENDALL; *In re* BATCHELOR, 1905 V.L.R. 366, 579; 26 A.L.T. 218; 27 A.L.T. 22; 11 A.L.R. 220, 316. [*Victoria.*]

Hospitals Act—Payment of contributions.—Under the Hospitals and Charitable Institutions Act, sec. 74, it is not necessary to obtain a mandamus to compel payment of contributions, inasmuch as an action of debt will lie. WAIRAU HOSPITAL, &c., BOARD *v.* PICTON HOSPITAL, &c., BOARD, 24 N.Z.L.R. 45. [*New Zealand.*]

Licensing Court—Judicial or ministerial function.—Where it was doubtful whether the licensing justices in refusing an application for a provisional certificate had acted judicially or ministerially, a mandamus was granted. R. *v.* LICENSING AUTHORITY OF ROCKHAMPTON; *Ex parte* FITZGERALD, 1905 S.R. (Q.) 179; Q.W.N. 64. [*Queensland.*]

—— **Mandamus to hear application.**—A provisional certificate was granted after hearing certain objections. Afterwards the applicant applied for a victualler's license, filing the proper notices and giving the necessary evidence. The licensing inspector gave no notice of objection except verbally at the hearing; this, however, the Court refused to accept, and no evidence was given in support of the objection. The license was then refused on the ground stated by the inspector. A mandamus was granted to compel the Licensing Court to hear the application. Form in *In re Range* ([1904] S.R. (Q.)) followed. R. *v.* LICENSING AUTHORITY OF NERANG, 1905 Q.W.N. 27. [*Queensland.*]

—— **To hear application for adjournment.**—*See* LICENSING. R. *v.* LICENSING JUSTICES OF TOOWOOMBA; *Ex parte* PIERCE, 1905 S.R. (Q.) 185; Q.W.N. 65. [*Queensland.*]

—— **Resignation of members of committee.**—A licensing committee wrongfully refused to hear an application for a publican's license. Afterwards an application for a mandamus was made, and before hearing the elected members of the committee resigned. *Held*, that a mandamus could not go to the members who had resigned, as that would be to order them to do what they no longer had power to do. *Held, further*, that until the vacancies were filled a mandamus could not go, as the persons who would be entitled to show cause were not yet in existence. *Reg.* v. *Mayor, &c. of Rochester* (7 E. & B. 910; 27 L.J.Q.B. 45) distinguished. BASTINGS *v.* BRUCE LICEN-

SING COMMITTEE, 7 N.Z. Gaz. L.R. 106. [*New Zealand.*]

Native Land Court—No other remedy.—*See* NATIVE LANDS. ATTORNEY-GENERAL *v.* SETH SMITH, 7 N.Z. Gaz. L.R. 662. [*New Zealand.*]

Under Justices Act.—*See* JUSTICES. *Ex parte* CURRY, 21 W.N. 260. [*New South Wales.*]

Questions of title—Decision of.—*See* PUBLIC WORKS. *In re* BROUGHTON, 4 S.R. 662; 21 W.N. 225. [*New South Wales.*]

Costs against respondent—No party to decision appealed against.—On an application for a mandamus, costs cannot be granted against a respondent who did not take the point upon which the magistrate refused to hear the case. *Ex parte* BULMER, 22 W.N. 121. [*New South Wales.*]

Costs against magistrate—Not called on in rule.—The Court cannot make an order for costs against a magistrate where he does not appear and is not called upon in the rule to show cause why he should not pay costs. *Ex parte* BULMER, 22 W.N. 121. [*New South Wales.*]

MARRIAGE.

Infant—Consent of parent.—Although a father *compos mentis* unreasonably refuses to consent to the proposed marriage of a minor, the Supreme Court cannot, under sec. 20 of Marriage Act Compilation Act, 1904 (which is a re-enactment of sec. 20 of the Marriage Act, 1880) declare such proposed marriage to be a proper one. *Re* A.B., 7 N.Z. Gaz. L.R. 575. [*New Zealand.*]

Maintenance orders.—*See* DESERTED WIVES AND CHILDREN.

MARSHALLING OF ASSETS.

See WILL. *In re* NOONAN, 1904 S.A.L.R. 151. [*South Australia*].

MASTER & SERVANT.

Wrongful dismissal.—The circumstances under which a master is justified in dismissing his servant for disobedience to orders not being wilful, and for misconduct unconnected with the employment considered. CORRY *v.* CLOUSTON, 7 N.Z. Gaz. L.R. 213. [*New Zealand.*]

Liability for acts of servant.—*See* PRINCIPAL AND AGENT.

Conspiracy by trade union to coerce employer.—*See* TRADE UNION. HEGGIE *v.* BRISBANE SHIPWRIGHTS' PROVIDENT UNION, 1905 S.R. (Q.) 155; Q.W.N. 62. [*Queensland.*]

Employers' Liability — Evidence.—The respondent was in the employ of the appellants, who were carriers, and was engaged, with others in their employ, in removing goods upon a traction wagon. The wagon had been coupled to a lorry, and was being drawn by horses harnessed to the lorry. The respondent was injured by being crushed between the wagon and the lorry. The jury found that the wagon had been improperly coupled to the lorry, and that the respondent had been ordered by the manager for the appellants, who was superintending the work, to take up his position between the wagon and the lorry in order to hold a rope and prevent the coupling giving way. The jury found that the immediate cause of the accident was the weight of the wagon, causing it to run down an incline and take charge of the lorry, and also causing the wagon to collide with a post. The respondent's statement of claim claimed damages alternatively at common law and under the Employers' Liability Acts. The jury brought in a verdict for £300 damages at common law. It was then agreed by counsel that the verdict for damages should be treated as applicable to either count if the findings upon either count would support it. *Held*, by the Court of Appeal (reversing the decision of Stout C.J.), (1) That the findings did not support a verdict at common law—(*a*) because the only negligence expressly found was negligence in the coupling, which, upon the findings, was not the proximate cause of the injury; and (*b*) because, although the verdict for damages might be held to imply a finding of negligence in placing the respondent between the vehicles this negligence would be negligence of another person in the service of the appellants (namely, their manager) which, though it would support a claim under the Employers' Liability Acts, would not support a claim at common law. (2) That the findings did not support a verdict under the Employers' Liability Acts, because the verdict for damages, looking to the manner in which it was given or agreed upon, could not be taken to imply a finding of negligence in placing the respondent between the vehicles. MUNT COTTRELL & Co. *v.* REYNOLDS, 24 N.Z.L.R. 606; 7 Gaz. L.R. 204. [*New Zealand.*]

—— **Personal representatives.**—Sec. 3 of the Employers' Liability Act, 1882, provides that where personal injury is caused to a workman in any of the ways mentioned in the section, the workman, or, in case the injury results in death, the legal personal

representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had uot been a workman of, nor in the service of the employer, nor engaged in his work. *Held*, that this provision gives a right of action nnder the Employers' Liability Acts, in case of the death of a workman, to those persons only who are within the classes defined by the Deaths by Accident Compensation Act, 1880, and the Acts amending it. KELLY *v.* FAKE, 24 N.Z.L.R. 547; 7 Gaz. L.R. 381. [*New Zealand.*]

The term "legal personal representative," in sec. 3 of the Employers' Liability Act, 1882, means the legally appointed administrator of the estate of the deceased, and that Act did not give the legal personal representative any right to maintain an action if there are no persons in existence for whose benefit an action could be brought under the Deaths by Accident Compensation Act, 1880, and its amendments. KELLY *v.* FAKE, 24 N.Z.L.R. 547; 7 Gaz. L.R. 381. [*New Zealand.*]

—— **Brothers and sisters.**—Sec. 10 of the Employers' Liability Act Amendment Act, 1891, provides that where personal injury to a workman who is illegitimate results in death, the same rights of compensation shall exist for the benefit of his mother, or of brothers and sisters by the same father and mother, as if he and such brothers and sisters were legitimate. *Held*, that this does not give a right of action under the Employers' Liability Acts for the benefit of brothers and sisters of a deceased workman, whether legitimate or illegitimate, there being no right of action under those Acts, independently of sec. 10, for the benefit of legitimate brothers and sisters of a deceased workman. KELLY *v.* FAKE, 24 N.Z.L.R. 547; 7 Gaz. L.R. 381. [*New Zealand.*]

—— **Leave to proceed with action—Delay.**—An application under sec. 6 for leave to proceed in an action on the ground that the applicant was, during the time within which notice might have been given, unaware that the respondent was liable was dismissed on the ground of delay in making the application. *In re* BAXTER, 22 W.N. 150. [*New South Wales.*]

—— **Reading with Workers' Compensation for Accidents Act, 1900.**—*See Workers' Compensation for Accidents, infra.*

Workers' Compensation for accidents—Employers' liability—Dependants.—The wider provisions of the Workers' Compensation for Accidents Act, 1900, and its amendments' cannot be read into the Employers' Liability Acts, nor be read as controlling or affording a means for interpreting the Deaths by Accident Compensation Act or the Employers' Liability Acts. A claim by brothers and sisters of a deceased worker for compensation, as "dependants" of the deceased worker under the Workers' Compensation for Accidents Act, can only be made by a proceeding under that Act. KELLY *v.* FAKE, 24 N.Z. L.R. 547; 7 Gaz. L.R. 381. [*New Zealand.*]

—— **Partial dependence.**—This was a claim for compensation under sec. 1 sub-sec. 1 (b) of the Second Schedule of the Workers' Compensation for Accidents Act, 1900, by the father, the legal personal representative of John Harbour, who died from the results of an injury by accident arising out of and in the course of his employment as a labourer at the respondents' paper mills. The accident happened on the 5th February, 1903, and the deceased died intestate on the 19th February, 1903. The claimant claimed that he and his wife were dependants on the said John Harbour. The evidence showed that the claimant was in part dependant on the earnings of the deceased at the time of his death, but it also showed that he received from the deceased's estate land and money more than sufficient to replace the assistance he had received from his son when alive. *Held*, that in these circumstances a claim in respect of partial dependence did not arise. HARBOUR *v.* FERGUSSON & MITCHELL, 7 N.Z. Gaz. L.R. 366. [*New Zealand.*]

—— **Course of employment.**—The plaintiff, a boy under 17, was injured through doing an act which he was explessly forbidden to do, and which was the duty of another employee to perform. *Held*, that the defendant was not liable. POWER *v.* THOMSON, 8 N.Z. Gaz. L.R. 82. [*New Zealand.*]

Where an employee, whilst in and about the place where his employment is, though not actually at work, does something that he thinks necessary in his employer's interests, and an accident happens, the accident, *prima facie*, arises out of, and in the course of the employment. SLEIGH *v.* NORTHERN UNION STEAMBOAT CO., LTD., 7 N.Z. Gaz. L.R. 83. [*New Zealand.*]

A worker died from blood poisoning supervening upon a slight abrasion received while at work, the blood poisoning being caused through overcrowding in a small house. *Held*, that the injury was received in the course of employment and that the death was the consequence of the injury. SEED *v.* SOMERVILLE, 7 N.Z. Gaz. L.R. 199. [*New Zealand.*]

Where a waggoner, after allowing a friend to take the reins, composed himself to smoke and sleep, and the driver, owing to inexperience, drove over a bank, and the wagon was overturned and the waggoner killed, *held*, that the accident did not arise out of the employment, as the waggoner had relinquished the control. HYNES *v.* MCCARTHY, 7 N.Z. Gaz. L.R. 99. [*New Zealand.*]

—— **Amount of compensation.**—The claimant, a stone-mason, was employed by the respondents at 1s. 6d. per hour, and was subject to be discharged, and might leave, at any time. He commenced work on Tuesday, the 4th August, 1903, and worked till Friday, the 14th August, 1903, when he was injured at the close of the day. During that time he earned £5 16s. 3d. If he had not been injured, he would probably have worked four hours on Saturday, the 15th August, but there was no prospect of his being employed after Saturday. If he had worked on Saturday, his total earnings would have been £6 2s. 3d. The respondents' pay week begins on Thursday and ends on Wednesday night. Claimant had therefore worked in three pay weeks, and he knew when the pay began and ended. *Held*, that the total sum earned was earned in a week of six days, and a second week, to be treated as a hypothetical week, in which five days would, but for the accident, have been worked, and that to find the average weekly earnings of the claimant, the sum of £6 2s. 3d. must be divided by two. *Ayers* v. *Buckeridge*, and the cases decided with it ([1902] 1 K.B. 57), and *Watters* v. *Clover, Clayton & Co.* (18 T.L.R. 60), followed. (*But see* Amending Act of 1904). WILLIAMS *v.* MAYOR, &C. OF DUNEDIN, 7 N.Z. Gaz. L.R. 326. [*New Zealand.*]

The plaintiff was employed by the defendant for one day only, the 5th April, 1904. He was injured on that day, and was disabled for a short time. His wages for the day were seven shillings. There was no intention on his part, or on the part of the defendant that his service should continue. *Held*, that the plaintiff was not entitled, under the above circumstances, to more than three shillings and sixpence per week for the period for which he was incapacitated from work. *Bartlett* v. *Tutton* ([1902] 1 K.B. 72), followed. GERNHOEFFER v. WHITESIDE, 7 N.Z. Gaz. L.R. 325. [*New Zealand.*]

—— **Funeral expenses.**—When compensation is being assessed under sec. 1 sub-sec. 1 (*b*), of the Second Schedule of the Workers' Compensation for Accidents Act, 1900, some allowance will be made for funeral expenses. *Bevan* v. *Crawshaw* ([1902] 1 K.B., p. 25), followed. When compensation is being assessed under sec. 1, sub-sec. 1 (*b*) aforesaid, all the relevant facts as bearing upon the measure of compensation laid down by the Act will be considered. The Court will consider the question very much as a jury would be expected to consider it—in the light of all the relevant facts, and of the decisions. NAPIER *v.* R., 7 N.Z. Gaz. L.R. 362. [*New Zealand.*]

Funeral expenses were allowed under sec. 1 sub-sec. 1 (*c*) of the Second Schedule aforesaid. HARBOUR *v.* FERGUSSON & MITCHELL, 7 N.Z. Gaz. L.R. 366. [*New Zealand.*]

—— **Average of weekly earnings.**—*See* DENSEM *v.* SPEDEN, 8 N.Z. Gaz. L.R. 58. [*New Zealand.*]

—— **Election of rights.**—By sec. 7 (2) of the Workers' Compensation Act, 1902 (1 & 2 Ed. VII., No. 5), a workman injured by accident is put to his election between his right to compensation under the Act (which is independent of negligence on the part of the employer) and his rights apart from the Act. Such election is made when the employer becomes "liable to pay compensation" under sec. 6 by the the worker, pursuant to sec. 11, giving the prescribed notice of the accident and making a claim for compensation, and either receiving or agreeing to receive compensation. Where a worker has given notice of accident and made a claim, and has received weekly sums of money from the employer pursuant to the claim, it is a question of law for the Judge, and not of fact for the jury, in a subsequent action against the employer for damages for the same injuries, whether or not the worker has made his election. A Judge on these facts having nonsuited the plaintiff, *held*, that the Judge was right. SYMONDS *v.* IVANHOE GOLD CORPORATION LTD., 7 W.A.L.R. 69. [*Western Australia.*]

—— **Industry—Bush-felling — Contractor —Other hazardous work.**—W. & B., being the owners of certain land, let the contract for felling and milling the bush to M., who in turn let it to D. D. engaged P., G. and T. to fell and mill the bush, at a certain price per 100 feet. The plaintiff was employed by P., G. and T. to fell the bush, and while so engaged was killed. *Held*, (1) that the relation of master and servant did not exist between any of the parties W. & B., M., D., and P. G. and T. (2) That the work on which the plaintiff was employed related directly to the land of W. & B., and was part of their trade or business, and was industrial or manufacturing work; (3) that the deceased was engaged in "other hazardous work" within the meaning of the Act. MORRIS *v.* WILLIAMS, 7 N.Z. Gaz. L.R. 195. [*New Zealand.*]

—— **Claim by workman distinct from claim by dependants on death—Compromise by workman.**—A claim by an injured workman for compensation, and a claim by his dependants on his subsequent decease, are distinct claims founded on different grounds. Such claims may arise at different times, and they are barred on the expiration of different periods of limitation. The only interdependence of such claims is that due to the fact that dependants must give credit for payments made to the injured worker before his death. "Payments" in this connection include weekly payments. The fact that an injured worker has compromised his claim for compensation by the acceptance of a lump sum will not, if he dies as the result of the injury,

affect the right of his dependants to make a claim, for such a claim is recognised by the statute as a distinct one founded on a ground different from that on which the worker's claim is based. VOLLHEIM *v.* BUICK, 7 N.Z. Gaz. L.R. 424. [*New Zealand.*]

—— **Claim—Sufficiency.**—*Quære*, whether an application for arbitration proceedings is a "claim" within the Workers' Compensation for Accidents Act, 1900, sec. 12 (2). Assuming that it is, such an application, to have the force and effect of the "claim" referred to, must be filed, and served or brought to the knowledge of the employer within the statutory time. An application for proceedings filed within time, but not brought to the knowledge of the employer, who lived in another district, within time, *held*, not sufficient. *Quære*, *also*, whether a verbal claim is sufficient. Assuming that it is, *held*, that it must be a claim so distinct that it can be referred to the Court, in its then form, and that the Court ought not to be asked to spell it out from vague conversations. Circumstances raising an equitable bar to the defence of want of claim within time considered, and *Teale* v. *Stevens* (7 Gaz. L.R., p. 60), referred to. PENROSE *v.* POWELL, 7 N.Z. Gaz. L.R. 65. [*New Zealand.*]

—— **Time for making.**—Equitable circumstances to be available as a bar to the setting up of the defence (under sec. 12 (2) of the Workers' Compensation for Accidents Act, 1900) that the claim was not made within the time limited, must be such as have, prior to the expiry of the time for making a claim, lulled the claimant into a sense of security, and so induced him not to claim compensation, and they must arise out of some acts of the respondent. Such acts, to support a case for relief, dispensing with the statutory obligation must show an acknowledgment of liability, or something implying an acknowledgment. TEALE *v.* STEVENS, 7 N.Z. Gaz. L.R. 60. [*New Zealand.*]

——**Form of order for disposal of share of infant.**—WARREN AND WARREN, *Re* 7 N.Z. Gaz. L.R. 122. [*New Zealand.*]

MEDICAL PRACTITIONERS.

Communication by patient. *See* EVIDENCE. STACK *v.* STACK, 8 N.Z. Gaz. L.R. 79. [*New Zealand.*]

False pretence of being medical practitioner.—R. *v.* KINGSTON, 24 N.Z.L.R. 431; 7 Gaz. L.R. 395. [*New Zealand.*]

MELBOURNE HARBOUR TRUST.

Wharfage rates.—Where by an Act of Parliament a wharfage rate is imposed on all goods, except those described by names coming from abroad and landed at a wharf, and, in an action to recover the rate on certain goods, it is alleged by the defendant that they come within the exception, the burden of proving that allegation is upon the defendant. If the particular name has a well-known original meaning, and the defendant wishes to prove that that meaning has been extended so as to include the goods upon which the rate is sought to be recovered, he must prove that, before the Act was passed, goods of that kind had been imported, that persons knowing the nature of those goods had called them by that name, and that, by their so doing, the goods had become commonly known by that name. *Held*, therefore, in the absence of such proof, that limestone rock phosphatized by contact with the droppings of birds, is not "guano" within the meaning of sec. 110 of the Melbourne Harbour Trust Act, 1890. The words "goods not otherwise enumerated" in the Seventh Schedule to that Act mean "goods not otherwise enumerated in any other of the groups of articles contained in the Schedule," and are not confined to goods *ejusdem generis* with those goods the names of which they follow. Under sec. 110 of that Act and the Seventh Schedule to it, the rate chargeable on any item set out in that schedule continues to be chargeable until an alteration in the rate on that particular item is made by the Commissioners. Decision of the Supreme Court affirmed. CUMING SMITH & CO., LTD. *v.* MELBOURNE HARBOUR TRUST COMMISSIONERS, 2 C.L.R. 735. [*Victoria.*]

MELBOURNE AND METROPOLITAN BOARD OF WORKS.

See NUISANCE. LAWLOR *v.* JOHNSTON, 1905 V.L.R. 714. [*Victoria.*]

MESNE PROFITS.

Limitation of action for trespass. *See* TRESPASS. GOLDSBOROUGH, MORT & CO. *v.* BOWTELL, 5 S.R. 461; 22 W.N. 129. [*New South Wales.*]

MILDURA IRRIGATION TRUSTS.

Land sold.—Land was sold by Messrs. Chaffey Bros. under their "time payment

system," and the purchaser was credited with the payment of some instalments of the purchase money. The purchaser did not complete, and the land was resumed by the vendors. *Held*, that the land was "sold" within the meaning of sec. 3 of the Act, and was, therefore, ratable. MILDURA IRRIGATION TRUST *v.* WILLOUGHBY, 1905 V.L.R. 90; 26 A.L.T. 196; 11 A.L.R. 102. [*Victoria.*]

MILITARY.

See DEFENCE ACT.

MILK.

See PUBLIC HEALTH.

MINING.

Mining on private property.—An agreement for mining on private property is not illegal, but is subject to the assertion of its rights by the Crown. An agreement for mining on private property which infringes the rights of the Crown is binding as between the parties and those who claim under them, until it is set aside at the instance of the Crown. SCOTT *v.* HUTCHINSON, 5 S.R. 484; 22 W.N. 155. [*New South Wales.*]

Sale of interests in mines—Laches.—In transactions relating to interests in mines the Court applies a special rule with regard to laches and delay, and requires an applicant for relief to show that he has not lain by in order to see whether or not the venture would be successful. *Per* Griffith C.J.: Even where the sale of a mining interest to the vendor's co-owner in the mine, with an option of re-purchase is held to be in truth a mortgage the rule as to laches and delay applies. ROWE *v.* OADES, 11 A.L.R. 486. [*Western Australia.*]

Mining privilege—Water-race license.—The provisions of regulation 47 of the regulations made under the Mining Act, 1898, which prescribes that an application for the renewal of a mining privilege shall be filed in the office of the Registrar within not more than two months and not less than one month before the expiration of the current term by effluxion of time, do not apply to a water-race license granted for a specified term of years under the provisions of the Mining Act, 1886, the Mining Act, 1891, and the regulations thereunder, such last-mentioned provisions having been specially modified by the Amendment Act of 1900. The Warden has jurisdiction to grant a renewal of such license if he is satisfied that the right in question has been continuously and *bona fide* held and used, and that no forfeiture has been incurred otherwise than by failure to renew the license. *In re* LUSICK AND MCILROY, 24 N.Z.L.R. 763; 7 Gaz. L.R. 426. [*New Zealand.*]

Goldfields—Water rates.—By the Goldfields Water Supply Act, 1902, it is provided as follows:—(1) A rate book shall be kept and the net annual value of the land shall be entered therein (sec. 51). (2) The annual value may be (*inter alia*) the current valuation of the local authority in whose district the land is situated (sec. 52). (3) Any person may appeal against the valuation in the rate book, but no appeal shall be allowed where the same does not exceed the current valuation of the same land by the local authority (sec. 62). Notice of such appeal shall be given as provided within one month after publication of the notice of the making up of the rate book (sec. 64). Proceedings were taken against X., for recovery of water rates under the above-mentioned Act. At the time the rate book was made the current valuation of the local authority was £425, but an appeal against such valuation was pending. Subsequently the municipal valuation was reduced to £350. Appellant was rated by the Water Supply Board at £425, against which no appeal was taken, as the time for same had expired when the appeal against the municipal valuation was decided. *Held*, that (1) current valuation means the valuation at the time the rate book was made; and (2) that the magistrate had no power to look behind the rate book. *Quære*, whether an appeal would not lie under sec. 62 where the rate is the same as the current valuation of the local authority, in which case the current valuation might mean current valuation at the time of the appeal. MCNULTY *v.* CARROLL, 7 W.A.L.R. 187. [*Western Australia.*]

Coal mine.—*See* COAL MINE.

Injuries sustained in mine—Particulars in plaint. *See* DISTRICT AND COUNTY COURTS. NEVILLE *v.* LORD NELSON GOLD CO., 1905 V.L.R. 242; 26 A.L.T. 160; 11 A.L.R. 83. [*Victoria.*]

Inspection of maps—Drainage. *See* DISCOVERY AND INSPECTION. WAIHI G.M. CO. *v.* WAIHI GRAND JUNCTION G.M. CO., 24 N.Z. L.R. 208; 7 Gaz. L.R. 321. [*New Zealand.*]

Forfeiture — Abandonment. — The proper way to consider the question of forfeiture or abandonment is to look to the statute under which the claim was granted to ascertain the conditions subject to which it was held, but to rely upon the Act in force at the date of the proceedings as the sole Act prescribing the practice of the Warden's Court wherein the forfeiture is sought to be enforced. Assuming that the provision of sec. 16 of the Mining Act Amendment Act, 1895, as to forfeiture is a

substantive part of the mining law, applicable, notwithstanding the repeal of the Act of 1891 and its amendments, to a claim or licensed holding the title to which was taken under those Acts, a forfeiture of such a claim or holding must nevertheless, since the Mining Act, 1898, be enforced under the provisions of that Act, including the provision of sec. 150 for relief against forfeiture. *Semble*, however, that sec. 16 of the Act of 1895 is not a substantive part of the title to a claim or holding held under the Act of 1891 and its amendments, but a procedure section which was swept away and re-enacted, in a form more beneficial to the holder, in the general provisions of the Act of 1898 relating to the "abandonment of mining privileges by operation of law" (secs. 151–156). EWING *v.* THE SCANDINAVIAN WATER-RACE CO. (Registered), 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

—— **Fine.**—The general rule, established by the decision on the provisions of the various Mining Acts for substituting a fine for a forfeiture, is that they are provisions relating to lapse, and are inapplicable to long neglect, or to neglect not atoned for by diligent work after the lapse. Under the altered language of sub-sec. 4 of sec. 150 of the Mining Act, 1898, the Court is, however, freer than formerly to exercise its discretion, according to the special circumstances of each case, in the widest sense, and may in an exceptional case depart from the standard previously in use, and which ought to continue in use in future, save in cases where the special circumstances call for a departure. EWING *v.* SCANDINAVIAN WATER-RACE CO., 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

A majority of the Court of Appeal (Stout C.J. and Edwards and Chapman JJ.) substituted a fine for a forfeiture (overruling the decisions of the Warden's Court and District Court that the case was not one in which this could be done), where, although there had been long neglect, there had not been intentional abandonment, and the whole circumstances were of a very special character, and it further appeared that the claim-holder had misapprehended his legal position. The Court, though varying the judgment of the Courts below by inflicting a fine upon the appellant in lieu of a forfeiture, gave the respondent the costs of the appeal, and made special provision for the payment of additional costs to the respondent out of the fine. EWING *v.* SCANDINAVIAN WATER-RACE CO. (Registered), 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

Although work done in furtherance of a claim-holder's project is work in connection with his claim which will protect it from forfeiture, a claim-holder cannot rely, for the protection of his claim, upon natural operations, such as the deepening, by the flow of water and debris, of a channel to be used as a tail-race, even though he may slightly aid the process from time to time by the expenditure of labour. EWING *v.* SCANDINAVIAN WATER-RACE CO. (Registered), 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

Default in working a claim is not caused by reason only of the occurrence of a natural contingency, within the meaning of sec. 157 of the Mining Act, 1898, where the claim is not worked simply by reason of the existence of a natural barrier, preventing ready exit from a basin in which the claim lies, which can be removed by adequate work. EWING *v.* SCANDINAVIAN WATER-RACE CO. (Registered), 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

—— **Declaration of service and posting of notice of application for forfeiture.**—It is not necessary to lodge with the Warden a declaration of posting and service of notice of application for forfeiture of a claim when both parties appear, such declaration being only necessary when the Warden proceeds *ex parte*. LEAHY *v.* SMITH, 1905 S.R. (Q.) 126; Q.W.N. 49. [*Queensland.*]

—— **Notice of application for forfeiture—Complaint.**—The notice lodged with the Warden under reg. 20 of the Mining Regulations, 10th May, 1900, is a complaint which enables the Warden to proceed under sec. 113 of the Mining Act, 1898. LEAHY *v.* SMITH, 1905 S.R. (Q.) 126; Q.W.N. 49. [*Queensland.*]

Warden's Court—Jurisdiction.—In accordance with the general principle that when an inferior Court has jurisdiction within certain local limits, the whole of the substance of the action must appear to have arisen within those limits, sec. 254 of the Mining Act, 1898, does not give the Warden's Court jurisdiction unless the whole of the substance of the action has arisen within the limits of that Court's jurisdiction. HENDERSON *v.* WANGAPEKA GOLD DREDGING CO., LTD., 7 N.Z. Gaz. L.R. 33. [*New Zealand.*]

—— **Setting aside lien—Practice.**—Sec. 260 of the Mining Act, 1898, applies in the case of an application to a Warden, under sec. 173, to set aside a lien registered under sec. 171, and a statement of claim in the prescribed form is the correct procedure under sec. 173. The mortgagees of a mining privilege have a *locus standi* to apply to a Warden to set aside such a lien registered against the mining privilege. Even if they had no such right, that would be matter of appeal, and not a ground for prohibition. The jurisdiction given to a Warden by sec. 173, to determine all questions and claims relating to such liens, is a jurisdiction given to him independently of sec. 254, and under sec. 173 the Warden has jurisdiction, although a material and substantial part of the cause of action (such as the title of mortgagees seeking to set aside a lien) may have arisen beyond his district.

Henderson v. *The Wangapeka Gold Dredging Co. Ltd.* (23 N.Z.L.R. 833), distinguished. DRUMMEY *v.* KENNY, 24 N.Z.L.R. 792; 7 Gaz. L.R. 428. [*New Zealand.*]

—— **Service of summons.**—Return of rule *nisi* for a writ of prohibition. The respondent Moderana, sued the appellant applicant, Backhouse, and one Canning, in the Warden's Court at Mt. Magnet for £148 3s. for work done, goods supplied, and horse hire. The particulars showed the items of the claim to be horse hire for 146 shifts, removing boiler, mining timber and wood supplied, and carting ore to the railway station. The summons was served on July 2nd, 1904, on Canning personally and on Backhouse by the posting of the summons on a notice board at the Warden's Court, he being absent from the district and having no agent or attorney. Backhouse had not been within the Mt. Magnet goldfield since June 3rd. At the hearing, Backhouse did not appear, and Canning appeared and applied for an adjournment on the ground that the summons had not been duly served on Backhouse, and that in the absence of the latter he was not in a position to defend. The Warden refused the application, and after hearing the plaintiff's evidence gave judgment for the amount claimed against both defendants. Backhouse then obtained a rule *nisi* for a writ of prohibition, on the ground that the Warden had no jurisdiction to hear the plaint as against Backhouse, he not having been duly served, and that the terms of the claim did not relate to mining. The return of the rule was referred by Parker A.C.J. to the Full Court. *Held*, that the Warden had general jurisdiction over the subject-matter by statute; that it was for him to decide whether the circumstances justified substituted service instead of personal service of the summons, and that on the facts the summons was in respect of a dispute concerning a mining tenement or mining. *Held, also*, that the Warden having jurisdiction, the defendant's remedy, if aggrieved by the decision, was by way of appeal and not by prohibition. *Barker* v. *Palmer* (8 Q.B.D. 9), applied. MODERANA *v.* BACKHOUSE, 7 W.A.L.R. 39. [*Western Australia.*]

—— **Supreme Court.**—The jurisdiction conferred upon the Warden's Court under the Mining Act, 1874, is co-ordinate with and not exclusive of the jurisdiction of the Supreme Court existing at the date of the commencement of that Act. SCOTT *v.* HUTCHINSON, 5 S.R. 484; 22 W.N. 155. [*New South Wales.*[

—— **Summary determination.**—Circumstances under which a party will be held to have consented to a summary determination by the Warden under sec. 113 of the Mining Act, 1898. LEAHY *v.* SMITH, 1905 S.R. (Q.) 126; Q.W.N. 49. [*Queensland.*]

Appeal—Court of Appeal—Appeal to Privy Council.—Sub-sec. 5 of sec. 290 of the Mining Act, 1898, provides that the decision of the Court of Appeal on an appeal to it under that Act shall be conclusive and final. *Held*, that the effect of this is that the Court of Appeal cannot give leave to appeal from its decision to the Privy Council. EWING *v.* SCANDINAVIAN WATER-RACE CO., 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

—— **Rehearing.**—Sec. 285 of the Mining Act, 1898, provides that if an appeal from a Warden's Court is on matters of fact alone, or on both fact and law, it shall be by way of re-hearing of the original proceedings, in like manner as in the case of proceedings commenced in the appellate Court. Sub-sec. 5 of sec. 290 provides that the decision of the appellate Court shall be final and conclusive, except in cases above a certain amount, in which there shall be a further right of appeal to the Court of Appeal. *Held*, that an appeal to the Court of Appeal is subject to the procedure of that Court, and is consequently a re-hearing, in which it is open to the Court of Appeal to review the exercise by the Warden's Court and by the District Court, on appeal from it, of its discretion upon the question whether a fine should be substituted for a forfeiture in a case in which liability to forfeiture has been established. EWING *v.* THE SCANDINAVIAN WATER-RACE CO., 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

—— **Grounds.**—Where the appellant relies on the grounds (1) that there was no evidence upon which the Court could reasonably find the verdict; (2) that the decision was against the weight of evidence; it is immaterial that the notice of appeal does not state the matters of law intended to be raised, because the second ground makes the appeal a general one on the facts, to be taken by re-hearing, and the notice of appeal on the law is thereby rendered ineffectual. CHAMBERS *v.* DEAN, 7 N.Z. Gaz. L.R. 404. [*New Zealand.*]

Removal of cause from District to Supreme Court.—*See* DISTRICT AND COUNTY COURTS. WAIHI G.M. CO. *v.* WAIHI GRAND JUNCTION GOLD CO, 7 N.Z. Gaz. L.R. 87. [*New Zealand.*]

Costs of special case stated by Warden.—*See* COSTS. MCGREGOR *v.* KEAN, 27 A.L.T. 20; 11 A.L.R. 337. [*Victoria.*]

MINING COMPANY.

See COMPANY.

MISREPRESENTATION.

Continuing representation.—*See* FRAUD. ROBERTSON *v.* BELSON, 1905 V.L.R. 555; 27 A.L.T. 48; 11 A.L.R. 299 [*Victoria.*]

MISTAKE.

Mistake of law.—In an action to recover the amount of rent paid to the Crown for the three years during which the plaintiff had been in occupation, *held*, that the money having been paid under a mistake of law, with a full knowledge of the facts and as full consideration had been received the plaintiff could not recover. MALONE *v.* WILLIAMS, 22 W.N. 205; and *see* R. *v.* ATKINSON, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412. [*New South Wales.*]

MORTGAGE.

Of lease—Condition of forfeiture—Enforcement against mortgagee.—*See* LANDLORD AND TENANT. CAIRNS *v.* BURGESS, 2 C.L.R. 298; 11 A.L.R. 244. [*Tasmania.*]

Of insurance policy.—*See* INSURANCE.

Contractors' and Workmen's Lien Act.—*See* LIEN.

Under Real Property Act (N.S.W.).—*See* LAND TRANSFER.

By unclassified societies.*See*—UNCLASSIFIED SOCIETIES REGISTRATION.

Mortgage or absolute assignment.—Where an absolute assignment contains on its face nothing to show that the relation of debtor and creditor is to exist between the parties and no case for rectification or cancellation is made, it will not be treated as a mortgage merely because a collateral agreement for re-purchase has been entered into. ROWE *v.* OADES, 11 A.L.R. 486. [*Western Australia.*]

Repayment—Before time.—*Per* Stout, C.J. Neither under sec. 50 of the Property Law Consolidation Act, 1883, nor under the general law of mortgage, can a mortgagor compel the mortgagee to accept the mortgage-money before its due date, even with interest to the end of the term. PEARCE *v.* STEVENS, 24 N.Z.L.R. 358; 7 Gaz. L.R. 176. [*New Zealand.*]

—— **Demand—Waiver.**—In June, 1884, the respondent bank made a regular demand under its mortgage (which was one to secure repayment, upon demand in writing, of the balance of an account current), and, upon default under the mortgage, it afterwards entered into possession of the mortgaged lands and live-stock, and remained in possession as mortgagee until the 25th March, 1889, when the mortgaged lands were sold through the Registrar, and purchased by the respondent bank. A verbal demand was made in February, 1889, prior to the sale, but it was alleged that no written demand was then made. *Held*, that no further demand than the demand made in June, 1884, was necessary; it being impossible to hold that the bank had waived that demand by entering into and remaining in possession under it. HAMILTON *v.* BANK OF NEW ZEALAND, 24 N.Z. L.R. 109; 7 Gaz. L.R. 277. [*New Zealand.*]

—— **Tender of mortgage debt—Pleading.**—*See* PLEADING.

Redemption — Delay — Acquiescence. — Upon a question whether the appellant (assuming him to have had a right to redeem notwithstanding a purchase by the respondent bank, as mortgagee, at a sale through the Registrar), had lost his right to redeem by delay and acquiescence, Edwards J. expressed an opinion (concurred in by the other members of the Court, Williams, Denniston, and Cooper JJ.) that there would have been very great difficulty in coming to the conclusion that, after the lapse of fifteen years, after taking service with the respondent bank as manager of the property under an agreement in writing in which he expressly admitted that the bank was the owner of that property, after many thousands of pounds had been expended, partly through his own instrumentality, as agent of the respondent bank, in improving the property and in completing the title, and after bad times had passed away and the value of the property had enormously increased in the progress of the colony, the appellant could claim to redeem a property which he was confessedly unable to redeem when the time came when he should have done so, upon the bare suggestion that he had, at the date of the action, for the first time discovered the true interpretation of a statute passed over forty years ago (the Conveyancing Ordinance Amendment Act, 1860, secs. 6 to 10). HAMILTON *v.* BANK OF NEW ZEALAND, 24 N.Z.L.R. 109; 7 Gaz. L.R. 277. [*New Zealand.*]

—— **Extension of time for.**—*See* PERMANENT TRUSTEE CO. *v.* MARTIN, 22 W.N. 76, *col.* 211. [*New South Wales.*]

Discharge—Mortgage of infant's land without authority.—In 1865, a father made an unauthorised mortgage of the land of his infant son. Neither principal nor interest of the mortgage money was ever paid. In 1873 he left Queensland, being last heard of in 1885, in Scotland. In 1873 he had given a

power of attorney on leaving Queensland. On the application of the son an order was made discharging the mortgage and directing an entry of the discharge. *Ex parte* NEIL, 1905 Q.W.N. 69. [*Queensland.*]

Statute of Limitations—Prevention of title by mortgage by owner.—*See* LIMITATIONS, STATUTE OF. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

Survivor of joint mortgagees.—The survivor of two joint mortgagees and the executors of the deceased mortgagee, are in equity tenants in common of the mortgage, and the survivor is only bound to execute a legal transfer of the share of the deceased mortgagee to the executors and is not bound to take any steps to enforce the mortgage. AITKEN *v.* SMITH, 27 A.L.T. 122. [*Victoria.*]

Foreclosure—Costs—Tender.—Although it is necessary that a tender of the amount due should comply in all the conditions of a strict legal tender in order to prevent interest running on a mortgage debt, yet it is not necessary that the money should be kept idle after refusal in order to deprive the mortgagee of his right to the costs of a subsequent foreclosure action. MOORE *v.* LEAN, 22 W.N. 209. [*New South Wales.*]

—— **Application to extend time for redemption—Terms.**—The usual terms of payment of the costs of the application as a condition precedent were imposed where a mortgagor applied for an extension of the time fixed for redemption by an order *nisi* for foreclosure, notwithstanding that the mortgagee was in possession and that the rents were considerably in excess of the interest payable under the mortgage. PERMANENT TRUSTEE CO. *v.* MARTIN, 22 W.N. 76. [*New South Wales.*]

—— **Foreclosure action—Fees payable on taking accounts.**—*See* SCOTTISH AND AUSTRALIAN INVESTMENT CO. *v.* MACFARLANE, 1905 Q.W.N. 23. [*Queensland.*]

Sale by mortgagee—Property Law Consolidation Act—Undervalue.—The provisions of secs. 52 to 60 of the Property Law Consolidation Act, 1883, in regard to sales by mortgagees through the Registrar, were not intended to cast upon the Registrar the duty, nor to clothe him with the power, to fix reserved prices on such sales. A sale under those provisions cannot, therefore, be set aside as fraudulent and void on the mere ground that the property has been bought by the mortgagees at a gross undervalue. HAMILTON *v.* BANK OF NEW ZEALAND, 24 N.Z.L.R. 109; 7 Gaz. L.R. 277. [*New Zealand.*]

Trustee mortgagee in possession.—*See* TRUST AND TRUSTEE. FARMER *v.* CHARD, 5 S.R. 342; 22 W.N. 110. [*New South Wales.*]

Locke King's Act—Mortgage including realty and personalty.—Where real and personal estate are comprised in the same mortgage, the mortgage debt must as between the devisee of the realty and the legatee of the personalty, in the absence of evidence that the land was intended to be the primary security for the amount advanced be borne ratably by the real and personal estate subject thereto. Locke King's Act (now sec. 109 of the Conveyancing and Law of Property Act, 1898) does not make mortgaged lands primarily liable for the mortgage debt to the exoneration of personal property subject to the same mortgage. MULLAVEY *v.* HARRISON, 22 W.N. 185. [*New South Wales.*]

—— **Contrary intention.**—Inasmuch as the Act 30 & 31 Vict. c. 69 has never been adopted in Queensland, a general direction to pay debts out of a specific fund indicates a "contrary intention" within sec. 78 of the Equity Act, 1867, so as to relieve the mortgaged property from payment of the mortgage debt. QUEENSLAND TRUSTEES LTD. *v.* FINNEY, 1905 S.R. (Q.) 98. [*Queensland.*]

Existence or validity of charge—Originating summons.—The Court of Equity has jurisdiction on an originating summons to enquire into the validity or existence of a mortgage or charge, but in the exercise of its discretion it should refuse to do so where the issue depends upon difficult or complicated questions of fact which may more conveniently be tried on oral evidence. In such cases the plaintiff should proceed by suit. *Per* Walker J. Rule 4 of Schedule IV. to the Equity Act, 1901, is a beneficial rule which should receive a liberal construction. CANONBAR RABBIT BOARD *v.* GOLDSBROUGH, MORT & CO., 5 S.R. 1; 21 W.N. 253. [*New South Wales.*]

Succession duty on mortgaged lands.—*See* STAMP DUTY. *In re* WISEMAN, 1905 S.R. (Q) 53; Q.W.N. 22. [*Queensland.*]

MUNICIPALITY.

ELECTIONS AND ELECTORS—Payment of Rates.—The acceptance of an incomplete

security on payment for rates for which a receipt was issued was *held* to be a sufficient payment within sec. 55 of 1897 No. 23 to entitle the ratepayer to vote, although the security was not completed until after the vote was recorded. Notices have to be given under sec. 153 before an owner of property occupied by a lessee can be held to be in arrears under sec. 55. *In re* JOHNSON, 22 W.N. 213. [*New South Wales.*]

—— **Joint owner.**—An elector is entitled under sec. 55 to vote in respect of property held jointly with another elector, in addition to any votes on property held by him in severalty. *In re* JOHNSON, 22 W.N. 213. [*New South Wales.*]

—— **Roll—"Trustee."**—The qualification of a municipal elector need not be stated in the roll as "owner," "lessee," or "occupier." The term trustee is a sufficient description of a qualification as "owner." *In re* JOHNSON, 22 W.N. 213. [*New South Wales.*]

—— **Enquiry as to conduct—Votes for Mayor and Councillors—Irregular roll—Returning officer—Counting votes—Votes in absence—Ballot papers.**—An enquiry into the conduct of the municipal election, as provided by sec. 141, will only be directed on a strong *prima facie* case, which would probably establish that the election was unduly made, or where the errors and irregularities alleged, if established, would have substantially affected the result of the election. An enquiry of a fishing nature will not be directed. As to the practice of municipal elections, a voter must cast all the votes to which he is entitled, whether for mayor, councillor, or otherwise, at the same time and place, and is not entitled, having cast portion of his votes at one polling place, thereafter to cast any other votes to which he would otherwise have been entitled at any other place. *Per* Parker A.C.J. and McMillan J.:—In respect of the use of the wrong voters' roll where the effect of the irregularity can be ascertained, and it is not reasonably calculated to affect the result of the election, the Court will not interpose. *Per* Burnside J.:—*Semble*, the irregularity is a matter of substance and is not purely an error of the returning officer; but assuming it to be the latter, it lies on the person elected, and not on the person challenging the election, to establish conclusively that the error did not affect the result of the election. It is the duty of the returning officer to count the votes and decide on all matters or questions arising during the election, but it is not necessary that he should physically perform the work of counting himself; it is sufficient if done by poll clerks in his presence and under his supervision. The ballot papers in the several ballot boxes need not be mixed together before being counted, but may be counted separately. The duties of returning officer may be performed by a deputy returning officer. A deputy returning officer, being appointed by the returning officer under the power conferred by sec. 92 to appoint "one or more deputy returning officers and such poll clerks as are required for taking the poll," is not *functus officio* upon the taking of the poll, as the words "as are required for taking the poll" apply only to poll clerks. *Per* Burnside J.: The intention of the Act was that there should be only one returning officer or person authorised to decide on questions arising during, or affecting the result of, an election or the admission or rejection of votes; the fact that "returning officer" is defined as including "deputy returning officer" leaves the matter in an unsatisfactory position. Only persons residing in the State more than ten miles from the place of election at any time within one month previous to the date of election are entitled to vote in absence under sec. 106, but such residence may be temporary only. Where a voter has properly voted in absence, and subsequently resides within ten miles of the place of election, on or before the day of election, such residence does not make the absentee vote informal. The proper time to take objection to absentee votes on the ground that the voter was not entitled to vote in absence is when such votes are opened by the returning officer, and when the counterfoils are compared with the rolls, and before the voting papers are placed in the ballot box; when placed in the ballot box they are to be treated in the same way as ordinary ballot papers. A voter who accepts a lesser number of ballot papers than he is entitled to thereby exhausts his franchise at the election, and is not afterwards entitled to receive the balance of voting papers due to him. MOLLOY *v.* BROWN, 7 W.A.L.R. 146. [*Western Australia.*]

OUSTER—Motion to oust — Costs — Informal notice that rule has been granted.—The respondent sat and voted after receiving a letter from the applicant's attorney informing him that a rule had been granted. *Held*, that he was liable for the costs, even though he had not been served with the rule *nisi*. *Ex parte* HUGHES, 5 S.R. 123; 22 W.N. 17. [*New South Wales.*]

TOWN CLERK—Authority to give recognisances.—*See* JUSTICES. THOMAS *v.* HALL, 7 W.A.L.R. 110. [*Western Australia.*]

ACTIONS—Place.—The jurisdiction of the Supreme Court is not ousted by sub-sec. 3 of sec. 402 of the Municipal Corporations Act, 1900. The word "place" in sec. 402 (3) refers to an area recognised by law as a unit for judicial purposes. In the case of Supreme Court actions it means "the judicial district of the Supreme Court;" in the case of District Court actions it means "the District Court district." HERBERT & CO., LTD. *v.*

THE MAYOR, &c., OF LAWRENCE, 7 N.Z. Gaz. L.R. 1. [*New Zealand.*]

ROADS AND STREETS—Closing street—Compensation—Magistrate's order—Jurisdiction of registrar.—The respondent council took steps by virtue of the Municipal Corporations Act, 1900, to close a street in the borough but omitted to pass a special order as required by sec. 239 of that Act. A resolution only was passed, and the matter then came before the magistrate, who performed the duties cast on him by the Seventh Schedule of the Act, and issued an order under secs. 5 and 8 thereof. A claim for compensation under the Public Works Act, 1894, for loss of frontage and reduction of access was served on the council, addressed to the "Foxton Borough Council." No notice of non-admission of the claim was given, and after the time mentioned in the statute, the claim was filed under sec. 44 of the Public Works Act, 1894. The Registrar at Wanganui amended the claim by altering the name of the respondent to "the Mayor, Councillors and Burgesses of the Borough of Foxton," and gave judgment for the claimant. It was clear that the Registrar had no power to amend the claim and give judgment, but it was argued that the claim and receipt of service could be held to be an award, and the judgment treated as a nullity. The grounds for the motion to set aside the judgment were:—(1) That the stopping of a street was not a public work, and therefore no compensation was payable. (2) That the street was not closed, as no special order was passed. (3) That the claim was addressed to "The Foxton Borough Council," and that, therefore, the corporation was not bound by it. (4) That the Registrar had no power to amend the name of the respondent. *Held*, that the magistrate's order under sec. 5 of the Seventh Schedule was not conclusive as to the regularity of the council's proceedings, and that as the street had not been closed by special order, the corporation could not be held liable. The award and judgment was therefore set aside. No opinion was expressed as to whether compensation would be payable if the street had been properly closed. *Held, also*, that the action of the Registrar was without jurisdiction. SYMONDS *v.* THE MAYOR, ETC., OF FOXTON, 7 N.Z. Gaz. L.R. 477. [*New Zealand.*]

—— **Public road—Right to caveat.** *See* LAND TRANSFER.

—— **Encroachment on thoroughfare—Balcony—Building.**—A balcony built on posts let into the kerb-stone of a street in front of a shop, with a flooring and roof on top of it, is a building within sec. 180 of the Municipalities Act, 1897. WEARNE *v.* BEALES, 22 W.N. 13. [*New South Wales.*]

NIGHTSOIL REMOVAL—A municipal council cannot recover expenses incurred in the removal of nightsoil under 1897 No. 24, sec. 27, where the work is done during prohibited hours and contrary to the provisions of s. 90 of the Police Offences Act. *Ex parte* WILKINS, 22 W.N. 82. [*New South Wales.*]

RATES—Owner and occupier.—By sec. 337 of the Municipal Institutions Act, 1900, rates are payable by the owner or occupier" of the lands rated. By sec. 6 "occupier" is defined as "the inhabitant occupier of any land, or, if there be no inhabitant occupier, the person entitled to the possession thereof, and shall include leaseholder or holder under agreement for lease"; and by the same section it is provided that "owner" "shall include the person for the time being receiving or entitled to receive the rents and profits of any lands within any municipality, whether on his own account or as agent, trustee, or attorney for another person." The defendant was lessee for a term of years from the Crown of the land and premises known as the Perth City Markets. Certain parts of the markets were let to stall-holders with exclusive occupation of their stalls and with rights, with the defendant, over certain other parts in common. The defendant had reserved to his own use a room or office, and another room for the use of a caretaker in his employ. The defendant having been rated by the plaintiffs in respect of the whole of the premises, and having declined to pay, was sued for the rate as occupier. The action was tried by Mr. Justice McMillan sitting without a jury, who found that the stall-holders were in exclusive occupation of their stalls, but that the defendant was in occupation of so much of the premises as had not been let to the stall-holders. The defendant had not been properly rated, as he should have been deemed to be in occupation of part of the premises only but his Honour *held* that this was a grievance which should have been remedied by appeal to the council, and thence of necessity to the Local Court, as provided by sec. 342, and that as he had not appealed, and three months had elapsed since the striking of the rate, he was estopped by sec. 353 from setting up the defence that he was not the owner nor occupier of the land in respect of which he was rated. His Honour was of opinion that only a person who had no interest in the land either as owner or occupier could raise that plea in an action to recover rates after the statutory period of three months from the striking of such rates. His Honour accordingly *held* that the plaintiffs were entitled to succeed in the action, and gave judgment for the amount claimed, with costs. Against this decision the defendant appealed. *Held*, that the defendant was liable to be rated in respect of the premises. *Per* Parker A.C.J.: The defendant was the "owner" of the stalls sub-let and the "occupier" of the portion of the market reserved for himself. *Per* Burnside J.: The words "owner or occu-

pier" must be read in a conjunctive sense. The defendant was the "owner" of the premises, he being the person entitled to receive the rents and profits. MAYOR AND COUNCILLORS OF PERTH *v.* THOMAS, 7 W.A. L.R. 131. [*Western Australia.*]

—— **Action for rates—Justices Act, 1890, sec. 201.**—*See* JUSTICES. BEECHWORTH, PRESIDENT, &c., OF SHIRE OF *v.* SHOEBRIDGE, 1905 V.L.R. 673; 27 A.L.T. 73; 11 A.L.R. 386. [*Victoria.*]

VEHICLE LICENSE.—A vehicle license taken out in a borough in which the vehicle mostly plies is good for that borough, and for all other boroughs within five miles therefrom, but it has no effect in any district which may lie between such boroughs. *Kane* v. *Rugg* (4 N.Z. Gaz. L.R.) considered and distinguished. CHALLENGER *v.* CAWKWELL, 8 N.Z. Gaz. L.R. 86. [*New Zealand.*]

BY-LAWS—Traction engines—Exceptional traffic.—The provisions of sec. 405 of the Municipal Corporations Act, 1900, are general provisions relating to all by-laws, and therefore apply to by-laws made under the Municipal Corporations Amendment Act, 1903, in the same manner as to by-laws made under the original Act. Sub-sec. 2 of sec. 405 of the Act of 1900 provides that a by-law may leave any matter or thing to be determined, applied, dispensed with, prohibited, or regulated by the council from time to time by resolution, either generally, or for any classes of cases, or in any particular case. *Held*, that this is not restricted to matters of detail or of administration, but authorises the leaving of essential matters to be dealt with by resolution. The council of the city of Wellington made a by-law providing that traction-engines should travel only on such streets within the city and between such hours and times as the council should from time to time by resolution prescribe. *Held*, that the council had power to make this by-law under the provisions of sub-secs. 1, 4, 8 and 9 of sec. 403 of the Municipal Corporations Act, 1900, and under the provisions in sec. 404 vesting in a council power to make by-laws concerning streets and the use thereof. *Held, also*, that the by-law could be supported under sub-sec. (c) of sec. 16 of the Municipal Corporations Amendment Act, 1903, the power to regulate the route by which traction engines might be allowed to pass along the streets of a borough giving to the council power to confine the traffic of traffic-engines to particular streets. "Exceptional traffic," as used in sub-sec. 9 of sec. 403 of the Act of 1900, means a class of traffic which is not in common use upon the public roads of a borough. The magistrates before whom the appellants were prosecuted for breach of a by-law found that traction-engines damaged man-holes and fireplugs when they were above the level of the street, and frightened horses, and might damage fireplugs in any case if there were stones on them. He held that the standard by which to determine whether traffic is extraordinary is the ordinary traffic on the road in question, and that traffic engaged in by a traction-engine is exceptional. *Held*, that assuming the question whether the traffic of traction-engines is "exceptional" or not to be a question of fact, the magistrate had found sufficient facts to support the view that it is "exceptional." *Held, further*, however, that the Legislature having by the Police Offences Acts, 1893 and 1894, treated such traffic as dangerous, and by sec. 16 of the Municipal Corporations Amendment Act, 1903, as a proper subject for regulation, the council of a borough had full power to declare it to be exceptional; and therefore proof of the by-law, and that the appellants drove their traction-engine along a road other than a road specified in a resolution under the by-law, would have been sufficient evidence to support a conviction. MUNT, COTTRELL & CO., LTD. *v.* DOYLE, 24 N.Z.L.R. 417. *But see* as to by-law providing for subsequent resolution LOCAL GOVERNMENT. COLLINS *v.* WOLTERS, 24 N.Z.L.R. 499; 7 Gaz. L.R. 63. [*New Zealand.*]

—— **Traffic.**—A by-law forbidding the driving in the streets of a vehicle carrying a load exceeding 15 cwt., unless the tyres of the wheels are four inches or more in width, is unreasonable and invalid. GRATER *v.* MONTAGUE, 7 N.Z. Gaz. L.R. 161. [*New Zealand.*]

—— **Loiter.**—A by-law providing that no person shall loiter, stand, or remain upon any street . . . for such time or in such manner as shall have the effect of obstructing or disturbing the free use thereof" under a penalty which did not exceed the maximum fixed by the Municipal Corporations Act for breach of a by-law, but exceeding that imposed by a statute aimed at the same offence, is not for that reason invalid. The words "in such manner, &c.," are to be read with each of the words "loiter, stand, or remain." The meaning of the word "loiter" in the section is not uncertain. The municipality had power to amend the by-law so as to make its meaning plain, and should do so in this case. *In re* AUCKLAND CITY COUNCIL, 7 N.Z. Gaz. L.R. 357; MAYOR, &c., OF AUCKLAND *v.* DAVIDSON, 24 N.Z.L.R. 250; 7 Gaz. L.R. 357; 8 N.Z. Gaz. L.R. 41. [*New Zealand.*]

—— **Cattle in street unattended.**—A by-law made under the Boroughs Statute, 1869, provided that:—"If any cattle be at any time found in any street without any person having the charge thereof the owner of such cattle" should be liable to a fine. *Held*, that the mere fact of allowing cattle to be alone and unattended in a street was an

offence, and that the question as to whether there was any wilfulness about their being alone did not enter into the matter. MARTIN *v.* KENNEDY, 27 A.L.T. 127. [*Victoria.*]

—— **Billiard rooms.**—Sec. 404 of the Municipal Corporations Act, 1900, provides that a council under that Act may make by-laws defining, licensing and controlling billiard-rooms. *Held*, that the word "controlling" was sufficient to authorise the fixing by by-law for the hours for closing billiard-rooms. Sec. 2 of the Police Offences Amendment Act, 1903, provides that every public billiard-room shall be closed from 11 o'clock at night, and makes it an offence for the manager of such a room to permit any game to be played in it during the hours when it is required to be closed. Sec. 4 of the same Act provides that, where under any by-law made under any other Act any public billiard-room is required to be closed from an earlier hour than 11 o'clock at night, the provisions of sec. 2 of the Act shall extend and apply to such earlier hour. A by-law of the city of Wellington fixed the hour for closing billiard rooms at 10 o'clock at night. Sec. 4 of the Act of 1903 defines a public billiard-room for the purposes of the Act as a billiard-room where billiards or any similar games are played for payment. The by-law defined a billiard-room for the purposes of the by-law as including every room to which the public were admitted and which might be used for the purpose of playing the games of billiards, etc. *Held*, that in the case of a billiard-room which came within the definitions both of the Act and of the by-law, the provisions of the Act applied as from the hour of closing fixed by the by-law, and that a conviction under the Act for permitting a game to be played after that hour was good. TWOHILL *v.* FAIRHALL, 24 N.Z.L.R. 535; 7 Gaz. L.R. 211. [*New Zealand.*]

NATIVE LANDS.

Alienation.—A block of land containing 14,457 acres was held by the original native owners under a certificate of title issued under the Land Transfer Act, 1870, and dated the 23rd of October, 1874. The original owners having died, the block was, on the 26th of February, 1889, by order of the Native Land Court, partitioned amongst the successors of the original grantees. One portion of the original block, containing an area of 3718 acres, was, under this partition order, allotted to a number of natives, including one Kete Hohaia. On the 31st of October, 1895, the Native Land Court ordered that the respective shares and interests of these natives should be as set out in a schedule indorsed on the back of the order, specifying the areas to which each was entitled, but not describing the positions or boundaries of any of these areas. In this schedule the name of Kete Hohaia appeared as being entitled to 457 acres, 3 roods, 19 perches. By a partition order dated the 10th of December, 1896, a block of land containing this area was allotted to Kete Hohaia, the position and boundaries having in the meantime been ascertained and fixed. All these orders were duly registered in the Land Transfer Office at Auckland. By memorandum of transfer dated the 15th of July, 1902, Kete Hohaia purported to transfer to the applicant portion of this area containing 100 acres, and on the transfer was a certificate by a Commissioner of the Native Land Court to the effect that he had witnessed the execution of the instrument, and that the alienation effected by it was in accordance with law. On the applicant tendering her transfer for registration the District Land Registrar refused to register the instrument, on the grounds set out in the memorandum below. *Held*, that the land was inalienable, as not coming within the amendments to sec. 117 of the Native Land Court Act, 1894, and that it was the duty of the Registrar to refuse to register the instrument. *Semble*, that the orders of the Native Land Court were invalid. FINLAYSON *v.* THE AUCKLAND DISTRICT LAND REGISTRAR, 24 N.Z.L.R. 341; 7 Gaz. L.R. 144. [*New Zealand.*]

Under sec. 15 of the New Zealand Native Reserves Act, 1856 (as amended by the Native Reserves Act, 1862), grants or leases of lands under those Acts might be made to Natives for whose benefit they might have been reserved, "either absolutely or subject to such conditions as the Governor might think fit." *Quære*, whether these words gave power to the Governor to make grants of the fee-simple of such lands with restrictions upon alienation. The grantee under the abovementioned grant devised the land. The land was under the Land Transfer Act, the grant having been issued under that Act. The executors of the grantee registered a transmission to themselves, and executed a transfer of the land to the devisees, which was registered, and a certificate of title was issued to the devisees—who were natives—without any restriction upon alienation. The devisees sold and transferred for valuable consideration to the defendant P., and the transfer to P. was registered. *Held*, by the Court of Appeal (Stout C.J. and Denniston, Edwards, Cooper, and Chapman JJ.) that assuming the defendant P. to have been aware of the restriction contained in the original grant, and assuming the restriction to have been one intended to affect the land in the hands of the devisees, he was nevertheless entitled to rely on the certificate of title issued to the devisees without restriction, and to assume that it had been properly issued to them, and was protected by the provisions of the Land Transfer Act. The title of a registered purchaser for value from a registered proprietor under the Land Transfer Act, can

only be defeated by showing actual fraud on his part. Constructive fraud based upon a presumption of knowledge of the law is insufficient. *Moore* v. *The Public Trustee* (20 N.Z.L.R. 288), distinguished. R. *v.* PRICE, 24 N.Z.L.R. 291; 7 Gaz. L.R. 40. [*New Zealand.*]

A Crown grant of land was issued to an aboriginal native under the New Zealand Native Reserves Act, 1856, and the Native Reserves Amendment Act, 1862, with a proviso that it should be "inalienable by sale, or by lease for a longer period than twenty-one years, or by mortgage, excepting with the consent of the Governor being previously obtained to every such sale, lease or mortgage." *Held,* by Stout C.J. and Edwards and Cooper JJ. (1) that the restriction (assuming that there was power to impose it) affected only the original grantee, and did not operate so as to prevent a devise by him of the land. (2) That devisees of the land took it free from any restriction whatever upon alienation. R. *v.* PRICE, 24 N.Z.L.R. 291; 7 Gaz. L.R. 40. [*New Zealand.*]

Native succession—Alienation restriction.—By a Crown grant, expressed to be made under the provisions of the Crown Grants Act (No. 2), 1862, and dated the 19th of September, 1865, sec. 31, Kaiapoi Native Reserve, was granted to Henare Korako, an aboriginal native, his heirs and assigns for ever. The grant contained the following provisoes: "Provided that no disposition of the land included in this grant, by way of sale, mortgage, lease or otherwise, shall be made without the consent in writing indorsed thereon of the Governor, or some person duly appointed by him, or otherwise duly authorised by law in that behalf: Provided, also, that upon the death of the grantee the Governor may, without prejudice to any sale, mortgage lease or other disposition made with such consent as hereinbefore mentioned, direct the succession and dispose of such land in accordance with the provisions of the Intestate Natives Succession Act, 1861, or otherwise according to the law in that behalf for the time being in force." *Held,* by the Court of Appeal (Williams, Denniston, Edwards, and Cooper JJ.; Stout C.J. dissenting) that, assuming that there was power to impose the restrictions contained in the first proviso, that proviso prevented a disposition of the land by will without the consent of the Governor, as well as any disposition of it *inter vivos* without consent. Looking to the scope and object of the proviso, construed in reference to the subject matter of the grant and the circumstances under which it was issued, the words "or otherwise" could not be restricted to dispositions *ejusdem generis* with those already mentioned—*i.e., inter vivos*; and there was nothing in the second proviso to compel the Court to restrict the effect of the first, it being explanatory merely, and intended to make clear upon the face of the grant what the devolution of the estate would be in the event of the grantee dying without having made a valid will. The rule or maxim that general words are to be construed *ejusdem generis* discussed. The grantee died intestate in 1883, and another native was appointed by the Native Land Court to succeed to his interest in the land. This native died in 1892, having made a will by which he purported to devise the land. *Held,* by the Court of Appeal (Williams, Denniston, Edwards, and Cooper JJ.; Stout C.J. dubitante): That the effect of sec. 5 of the Native Succession Act, 1881, was to give to the successor the estate which the original grantee had under the grant, subject to the restrictions imposed by the grant (if valid); and that, assuming the restrictions to be valid the will made by the successor to the original grantee was inoperative as a devise of the land. *Quære,* whether there was any power to impose such restrictions in a grant of the kind. *Per* Edwards, J.: Sec. 44 of the Native Land Court Act, 1886, was intended only to supplement defects in the execution of a will, and not to enable a native to devise inalienable land. *In re* URU *v.* TE RANGI, 24 N.Z.L.R. 390; 7 Gaz. L.R. 16. [*New Zealand.*]

Maori Lands Act—Owners.—Whether the land affected is or is not under the provisions of the Land Transfer Act, 1885, the persons declared by the Native Land Court to be successors to a deceased owner are "owners" within the meaning of sec. 22 of the Maori Lands Administration Act, 1900, sec. 4 of the amending Act of 1901, and sec. 10 of the Maori Land Laws Amendment Act, 1903, from the time when the order of the Native Land Court, declaring them to be such successors, is made, and the appointment under the Maori Real Estate Management Act, 1888, of two adult successors as trustees for the other successor, an infant, does not decrease the number of owners. ELDER *v.* BATHAM, 7 N.Z. Gaz. L.R. 360, 518. [*New Zealand.*]

Native Land Court—Jurisdiction of Supreme Court to enquire into irregularities.—If the Native Land Court constituted under the Native Land Court Act, 1894, acts within its jurisdiction, and its orders are not obtained by fraud, the Supreme Court has no jurisdiction to enquire into the regularity of the proceedings. RANGINUI *v.* NOLAN, 7 N.Z. Gaz. L.R. 620. [*New Zealand.*]

—— **Prohibition — Natural justice — Procedure.**—So long as the Native Appellate Court is seised of a dispute between natives and natives, affecting the title to Native Lands, the Native Appellate Court may deal with it as it pleases. It may proceed contrary to what is called natural justice. It may also adopt a procedure that an English Court or the Supreme Court or Court of Appeal of New Zealand

would not adopt, and if it does so the Supreme Court cannot interfere HAKOPA TE AHUNGA *v.* SETH SMITH, 7 N.Z. Gaz. L.R. 665. [*New Zealand.*]

—— **Abatement—Prohibition—Mandamus.**—Although sec. 46 of the Native Lands Court Act, 1894, may not exclude the principle of abatement, the Native Land Court does not exceed its jurisdiction by exercising the powers conferred upon it by that section, without applying the principle of abatement. Consequently an application for prohibition on the ground that the Native Land Court has not applied the principle of abatement will be refused; and further, as it is not clear that there is no other remedy but in the Native Land Court, the Court will not, on an application for prohibition, grant mandamus. *Per* Stout C.J.: Sec. 46 does not purport to alter the English law of abatement. ATTORNEY-GENERAL *v.* SETH SMITH, 7 N.Z. Gaz. L.R. 662. [*New Zealand.*]

—— **Division order.** — *Quære,* whether the effect of a division order made by the Native Land Court on the 11th Sept., 1886, was to extinguish the native title and to make the land in respect of which the order was made subject to the provisions of the Land Transfer Act, 1885, so that a certificate of title and not a Crown grant should have been issued therefor. BEALE *v.* TIHEMA TE HAU, 7 N.Z. Gaz. L.R. 622. [*New Zealand.*]

NAVAL DISCIPLINE.

See JUSTICES. *In re* WALTERS, 7 N.Z. Gaz. L.R. 259. [*New Zealand.*]

NEGLIGENCE.

Standard of care.—The decision of the High Court in *Marshall* v. *The Colonial Bank* (1 C.L.R. 632), is a binding authority for the proposition that, as a general rule, in an action for negligence, the question of whether the defendant took reasonable care depends, *inter alia*, upon the degree of his intelligence. *Held*, therefore, in an action against a trustee appointed by a will in respect of moneys alleged to have been lost to the trust estate by the negligence of the trustee, the plaintiff must give evidence of the degree of intelligence of the trustee. AUSTIN *v.* AUSTIN, 1905 A.L.R. 564; 27 A.L.T. 17, 43; 11 A.L.R. 337. [*Victoria.*]

Statutory corporation—Extent of liability.—Where a body corporate created by statute is given power to carry out works, and to collect funds for that purposes, the body is liable in damages to a person injured by the negligent carrying out of such works, and the funds collected must discharge that liability. The onus is not upon the person claiming compensation of showing that there are such funds available, or that the body had funds with which to properly perform the duty. By the Fremantle Harbour Trust Act, 1902 (2 Ed. VII. No. 17), a body corporate styled the Fremantle Harbour Trust Commissioners is created and given the exclusive control of the Fremantle Harbour, and is invested with certain powers and charged with certain duties in connection therewith. Included in such duties are the lighting of the wharves, etc., vested in them (sec. 26), and the collection of harbour dues and wharfage charges (sec. 39). The plaintiff, while walking at night upon a wharf vested in the Commissioners, fell and was injured. He subsequently claimed damages against the Commissioners for negligence in not having sufficiently lighted the wharf, and in having placed the rails and levers thereon too high above the decking without protection. The action was heard before the Acting-Chief Justice and a jury. The jury found that the defendants had been negligent in both the above respects, and on this finding the learned Judge, on July 16th, 1904, entered judgment for the plaintiff. The defendants appealed, the material grounds being that they were not liable at all on the true construction of the statute; that in any event they could only be liable to the extent of the funds available for carrying out the duty for the negligent performance of which they were sued; and that the onus lay upon the plaintiff, which he had not discharged, of showing that there were such funds available. *Held*, that on the true construction of the statute, the defendants were liable. MCGOUGH *v.* FREMANTLE HARBOUR TRUST COMMISSIONERS, 7 W.A.L.R. 136. [*Western Australia.*]

Contributory negligence.—Where a person is negligently crossing a tram-line in front of an approaching car and is injured, he cannot recover even if the motor-man is negligently driving at an excessive speed. SHEARER *v.* DUNEDIN, MAYOR &C., OF, 24 N.Z. L.R. 192; 7 Gaz L.R. 422. [*New Zealand.*]

In an action for negligence, if it appears on the plaintiff's case that he has been guilty of contributory negligence, the Court should grant a nonsuit or direct judgment for the defendant, unless there is also evidence fit for the jury that, notwithstanding the plaintiff's contributory negligence, the defendant, by the exercise of reasonable care, could have averted the injury. In an action of negligence it appeared that the plaintiff was run over by a train at a level crossing. She heard a whistle, waited until one train had passed to her left, crossed the lines immediately behind it, and was knocked down and run over by another train coming from the opposite direction. She said that after the first train had passed she looked both ways and saw only the first train. Owing to the peculiar forma-

tion of the track, she must have seen the second train if she had actually looked in the direction from which it was coming. There was evidence that the second train was a special, and was travelling at an unusually fast rate of speed, and did not sound a whistle. At the trial a verdict was directed for the defendant on the ground of the plaintiff's contributory negligence. The Full Court *held*, that the question of contributory negligence could not be withdrawn from the jury, and that the judgment must be set aside. *Held* (Griffith, C.J., dubitante), that the nonsuit must be set aside on the ground that there was sufficient evidence to go to the jury that the defendant's servants, by the exercise of ordinary care, could have averted the accident. Decision of the Full Court of Western Australia affirmed. *Coyle* v. *Great Northern Railway Co. of Ireland* (20 L.R. Ir. 409) followed. LEAHY *v.* COMMISSIONER OF RAILWAYS; COMMISSIONER OF RAILWAYS *v.* LEAHY, 2 C.L.R. 54; 7 W.A.L.R. 49. [*Western Australia.*]

Natural consequence—Agent.—The appellant volunteered to drive a party of officers of the Municipal Council of Gisborne to the site of a proposed water supply for that town. On the arrival of the party at its destination, appellant left his horse and buggy in the charge of two of the party, one of whom took the horse from the shafts and turned it out to graze, with the harness still upon it. The animal took fright, bolted along the road and at a distance of five miles from the place where it had been released from the buggy, overtook the respondents who was riding a bicycle, knocked him down, and injured him. Previous to the accident, respondent had been riding on the footpath, and if, on turning into the road, he had looked behind him, he would have seen the horse approaching; but he did not do so. *Held*, affirming the decision of the magistrate, that the horse being under the personal control of the appellant, the action had been rightly brought against him; that the persons in charge of the horse were the appellant's agents, and that he was therefore responsible for their negligence in the matter; that the accident was the natural consequences of the negligent act of turning the horse loose encumbered with its harness; and that, the injury to the respondent being the natural consequence of the negligence of appellant's agent, the distance intervening between the place where the horse was released and the spot where the accident actually occurred was immaterial. *Paterson* v. *Fleming* (6 Gaz. L.R. 381, 394; 23 N.Z.L.R. 676), distinguished. LYSNAR *v.* BINNIE, 24 N.Z.L.R. 241. [*New Zealand.*]

Evidence.—In an action for damages for injuries occasioned by the defendant's negligence, where no facts are shown from which negligence may be reasonably inferred, the case may properly be withdrawn from the jury. The plaintiff, a passenger by a suburban railway train, had entered a carriage and was taking or had taken her seat, when a porter "slammed" the door. The plaintiff had on that moment put her hand to pull her dress away from the doorway, and her thumb was crushed by the closing of the door. At the close of the evidence on behalf of the plaintiff, the learned Commissioner, on the motion of counsel for the defendant, withdrew the case from the jury on the ground that the evidence did not disclose any negligence on the part of the defendant. *Held*, that there had been no negligence shown on the part of the defendant, and that the learned Commissioner was right in withdrawing the case from the jury on that ground. RICHARDSON *v.* COMMISSIONER OF RAILWAYS, 7 W.A.L.R. 172. [*Western Australia.*]

It is not necessarily negligence to drive a car at the rate of fifteen to twenty miles an hour on a little frequented road. The fact that a person was not merely knocked down, but was also dragged along for a considerable distance underneath the car, is some evidence that the motorman was further negligent in not stopping the car with sufficient promptitude after the collision, or after the collision became inevitable. If a car runs over a person on the track and the motorman does not know he has been run over, a jury would be entitled to find the motorman was negligent in not keeping a good look-out. SHEARER *v.* DUNEDIN, MAYOR, &C., OF, 24 N.Z.L.R. 192; 7 Gaz. L.R. 422. [*New Zealand.*]

Turning horses into street.—If a man turns a mob of horses into a public road, and allows them to proceed along that road without proper control or guidance, he is guilty of negligence, especially where the road is in an inhabited district and is frequented by the public; and if, in consequence of this negligence, one of the public lawfully using the road sustains an injury, the person through whose negligent conduct the horses doing such injury have been allowed to pass along the road is *prima facie* responsible for such injury. PAUL *v.* ROWE, 24 N.Z.L.R. 641. [*New Zealand.*]

With regard to roads.—*See* ROADS. MCKEON *v.* MILLER; MILLER *v.* MCKEON, 5 S.R. 128; 22 W.N. 9; 11 A.L.R. 489. [*New South Wales.*]

Railways.—*See* RAILWAYS.

NEW TRIAL.

Where result must be the same.—A new trial will not be granted where it is clear that a second trial must have the same result as the first. Decision of the Supreme Court ([1904] 4 S.R. (N.S.W.) 182), refusing to grant a new

trial, affirmed, but on a different ground. DEANE *v.* CITY BANK OF SYDNEY, 2 C.L.R. 198; 11 A.L.R. 1. [*New South Wales.*]

Verdict against special findings.—New trial ordered where the findings did not support a verdict which had been given for the plaintiff, but were defective owing to the case having been presented to the jury from a wrong point of view. MUNT, COTTRELL & CO., LTD. *v.* REYNOLDS, 24 N.Z.L.R. 606; 7 Gaz. L.R. 204. [*New Zealand.*]

Surprise.—A new trial will not be granted on the ground of surprise, if the evidence alleged to be in the nature of a surprise is immaterial. THOMAS *v.* THE CROWN, 2 C.L.R. 127. [*Western Australia.*]

A new trial will be granted on the ground of surprise where a *prima facie* case of injustice, arising from mistake or error of a witness has been shown, the effect of which was that the Court had not an opportunity of deciding the real merits of the issue. But the party applying will be limited at the new trial of proving the matters which he was prevented from proving at the former trial, owing to such mistake or error, and will not be at liberty to adduce evidence on other matters in dispute. IDA H. G.M. Co. *v.* JONES, 7 W.A.L.R. 29. [*Western Australia.*]

Non-direction.—Whether a new trial will be granted on the ground that the Judge omitted to give a particular direction (such direction not having been asked for) discussed. BENJAMIN *v.* STEWART, 1905 S.R. (Q.) 35; Q.W.N. 12. [*Queensland.*]

Misdirection.—Where there has been an erroneous direction which may have been the foundation of the jury's verdict, and it is impossible to say whether the verdict proceeded upon the erroneous direction, or upon the ground that, under all the circumstances, the libel was justified, there must be a new trial. GODHARD *v.* JAMES INGLIS & CO., LTD., 2 C.L.R. 78. [*New South Wales.*]

Direction—Damages.—In an action for damages for personal injuries, the Judge, in directing the jury, need not mention all the matters which should be considered by the jury in assessing the amount of damages, nor need he specifically tell them that they are not to try and give a compensation for those injuries, but it is sufficient if he brings the attention of the jury fairly to those matters. *Ritchie* v. *Victorian Railways Commissioner* (25 V.L.R. 272), explained. TONKIN *v.* JUMBUNNA COAL MINE CO., 27 A.L.T. 99; 11 A.L.R. 454. [*Victoria.*]

Payment of costs—Condition precedent to new trial.—*See* FEDERAL LAW. LYSAGHT BROS. & CO., LTD. *v.* FALK (No. 2), 2 C.L.R. 443; 11 A.L.R. 445. [*New South Wales.*]

Appeal from order granting—Rejection of evidence.—*See* FEDERAL LAW. HARRIS *v.* SYDNEY GLASS AND TILE CO., 2 C.L.R. 227; 11 A.L.R. 49. [*New South Wales.*]

After reference to arbitration.—*See* ARBITRATION. MUNRO *v.* MURRAY, 22 W.N. 113. [*New South Wales.*]

In criminal cases.—*See* CRIMINAL LAW.

In District and County Courts.—*See* DISTRICT AND COUNTY COURTS.

Entry of judgment.—*See* JUDGMENT.

NIGHTSOIL REMOVAL.

See MUNICIPALITIES. *Ex parte* WILKINS, 22 W.N. 82; and CONTRACT—BOROUGH OF TAMWORTH *v.* SANDERS, 2 C.L.R. 214. [*New South Wales.*]

NONSUIT.

See LIEN. HAYNES *v.* MCKILLOP, 7 N.Z. Gaz. L.R. 478. [*New Zealand.*]

In District and County Courts.—*See* DISTRICT AND COUNTY COURTS.

NOXIOUS TRADES.

See PUBLIC HEALTH—SLAUGTERING.

NOXIOUS WEEDS.

Failure to destroy weeds.—The power of the inspector to give notice under sec. 11 of the Noxious Weeds Act, 1900, does not arise till there has been a default under sec. 9. An information, therefore, which merely states that the accused failed to comply with the notice without showing that such notice was given after default under sec. 9, discloses no offence. GOODWIN *v.* ROSS, 7 N.Z. Gaz. L.R. 545. (*New Zealand.*]

Disregard of duty.—Every person commits an offence against the provisions of the Noxious Weeds Act, 1900, who disregards a duty cast upon him by that Act. GOODWIN *v.* ROSS, 7 N.Z. Gaz. L.R. 545. [*New Zealand.*]

Lessee—Owner.—Where there is a lease of lands, but the lessee has not gone into occupation, the lessee cannot be held to be the "owner" of such lands within the meaning of the Noxious Weeds Act, 1900, for that would throw upon him the whole burden of

eradicating weeds, and deprive him of his statutory remedy over against the actual owner. BAILEY *v.* DEEM, 7 N.Z. Gaz. L.R. 73. [*New Zealand.*]

NUISANCE.

Abatement.—*See* INJUNCTION. LAWLOR *v.* JOHNSTON, 1905 V.L.R. 714. [*Victoria.*]

Melbourne and Metropolitan Board of Works Act.—The Melbourne and Metropolitan Board of Works Act, 1890, s. 79, furnishes no answer to an action for damages and injunction for keeping ventilating pipes on the defendant's wall so as to overhang the plaintiff's land. LAWLOR *v.* JOHNSTON, 1905 V.L.R. 714. [*Victoria.*]

Prescription.—The defendant's predecessors in title acquired certain lands in 1881, upon which they, in 1882, erected kennels for hounds. Certain other buildings were also erected, in which they boiled down the carcases of animals for the purpose of supplying the hounds with food. The defendants were registered under the Unclassified Societies Registration Act, 1895. The plaintiff's husband acquired the land adjoining the defendants' property in 1886. Prior to this the previous owners of this land had occupied a house situated near the kennels, but had not made any complaint respecting any nuisance arising therefrom. The house occupied by the plaintiff and her family was erected further away from the kennels than the former house. The number of hounds kept by the defendants at their kennels fluctuated from time to time, but no complaint appeared to have been made by the plaintiff or by any of her family till shortly before the action commenced. *Held*, that the defendants had acquired a prescriptive right to commit the nuisances complained of, from twenty years' uninterrupted user, notwithstanding the fact that the defendants were not the same body which had existed prior to the Unclassified Societies Registration Act, 1895, and that the plaintiff's occupation of the adjoining property had not commenced till 1886. AUCKRAN *v.* THE PAKURANGA HUNT CLUB, 24 N.Z.L.R. 235. [*New Zealand.*]

NUISANCE PREVENTION.

Nightsoil removal—Remuneration of contractor.—*See* CONTRACT. BOROUGH OF TAMWORTH *v.* SANDERS, 2 C.L.R. 214; MUNICIPALITY: *Ex parte* WILKINS, 22 W.N. 82. [*New South Wales.*]

NULLITIES AND IRREGULARITIES.

Observations on.—GREGORY *v.* MURPHY, 11 A.L.R. 507. [*Victoria.*]

OATHS.

Extra judicial oath.—*See* CRIMINAL LAW. R. *v.* MARTIN, 4 S.R. 720; 21 W.N. 233. [*New South Wales.*]

Form of affirmation.—*See* PROBATE AND ADMINISTRATION. *In the will of* LILLEY, 7 N.Z. Gaz. L.R. 380. [*New Zealand.*]

OBSCENE PUBLICATIONS.

1901 No. 12, secs. 3, 76 (f)—Posting indecent matter.—The liability for posting indecent matter under sec. 16 (*f*) of 1901 No. 12 must depend upon the facts of each case. The posting of a medical trade advertisement, which is not indecent within the meaning of sec. 3, in reply to a letter asking for information as to the treatment of certain ailments is not an offence under sec. 16 (*f*). *Ex parte* LARKIN, 22 W.N. 57. [*New South Wales.*]

Mens rea.—In the absence of *mens rea* it is not an offence under sec. 3 of the Offensive Publications Act, 1892, to sell a newspaper containing indecent, immoral or obscene matter, but as the statute has not expressly made wilfulness or knowledge an ingredient of the offence, the onus of proving the absence of a guilty mind is on the accused. R. *v.* EWART, 8 N.Z. Gaz. L.R. 22. [*New Zealand.*]

Object of publication.—On a prosecution for publishing a newspaper containing indecent matter, it is no defence to show that the indecent matter published was a correct report of judicial proceedings, or that the object of the publication was legitimate. *Steele* v. *Bearman* (L.R. 7 C.P. 261) followed. R. *v.* EWART, 8 N.Z. Gaz. L.R. 22. [*New Zealand.*]

OFFENSIVE PUBLICATIONS.

See OBSCENE PUBLICATIONS.

ORIGINATING SUMMONS.

See PRACTICE.

OYSTERS.

See FISHERIES.

PACIFIC ISLAND LABOURERS.

Deduction from wages for sickness.—The Pacific Island Labourers Act Amendment Act, 1884, provides (sec. 3), that "all agreements for service made with islanders whether the stipulated time for their return to their native islands has arrived or not, shall be in the form in Schedule G. to the principal Act, or to the like effect," &c. Schedule G. contains, *inter alia*, a provision that no wages shall be deducted for medical attendance. By sec. 47 of the Act of 1880, the Governor-in-Council is empowered to make regulations "not inconsistent with the provisions of the Act for the due and effectual execution of the provisions thereof, and respecting any matter or thing necessary to give effect to the object of this Act," &c. A regulation, purporting to be made in pursuance of this section, was made on 25th February, 1896, which provided (No. 5), that "No employer of a time-expired islander shall be required to pay the wages of any such islander during sickness," &c. In a proceeding by respondent, a time-expired islander, to recover a sum of money representing wages deducted by his employer during sickness, *held*, affirming the decision of the Supreme Court of Queensland, that regulation 5 did not fall within the enabling words of sec. 47 of the Act, and was consequently inoperative to alter the law by which the parties to the engagement were governed, and that as the actual written agreement for service contained no stipulation for such a deduction, the respondent was entitled to recover. YOUNG *v.* TOCKASSIE; TOCKASSIE *v.* YOUNG, 2 C.L.R. 470; 1905 S.R. (Q) 110; Q.W.N. 45. [*High Court.*]

Tropical or semi-tropical agriculture—Laying tramway.—Employing islanders in laying a portable tramway for the purpose of clearing land of timber, is not employing them in tropical or semi-tropical agriculture within the meaning of the Pacific Island Labourers Act, 1884, secs. 2, 10, at any rate where there is no clear intention of following up the clearing by growing cane or entering into some definite arrangement that cane shall be grown. NEWMAN *v.* WARING; *Ex parte* WARING, 1905 S.R. (Q.) 83; Q.W.N. 29. [*Queensland.*]

Evidence of offence.—Evidence of employing Pacific islander at work other than tropical or semi-tropical labour. CAULFIELD *v.* SOOTI; *Ex parte* SOOTI, 1905 S.R. (Q.) 196; Q.W.N. 68. [*Queensland.*]

PARLIAMENT.

Privileges Act—Adjournment of trial.—The object of the Privileges Act, 1866, Amendment Act, 1872, is to enable a member of the General Assembly to obtain an "adjournment" or "appointment" of the trial or hearing of any civil proceedings pending against him in any Court of record to or on some day beyond the period of thirty days after the termination of a session of Parliament. The words "some sitting of such Court" in sec. 4 of the above Act are to be construed to mean any date at which the Court has power in any instance to say that it will sit and hear a case. The adjournment of a trial from the first day of a sitting to a later date in the course of such sitting, such later date being over thirty days from the termination of the parliamentary session, is a compliance with the said 4th section. SEDDON *v.* TAYLOR, 24 N.Z.L.R. 198; 7 Gaz. L.R. 387. [*New Zealand.*]

Speaker's certificate—Summons for—Interrogatories.—*See* PRACTICE. SEDDON *v.* TAYLOR, 7 N.Z. Gaz. L.R. 389. [*New Zealand.*]

PARTICULARS.

See PLEADING—PRACTICE.

PARTITION.

Expenditure as co-tenant.—The plaintiff and the defendant in a partition suit being tenants in common of realty, part of which, a licensed hotel, the plaintiff let to the defendant and the defendant sub-let to the plaintiff. Under the sublease the plaintiff was bound to observe the licensing laws, to carry on on the premises the business of a publican, and to do nothing whereby the license might be forfeited or suspended. The plaintiff having in accordance with the requirements of the Licensing Committee erected fire escapes in the hotel claimed credit for the moneys expended on the work. *Held*, that since under the decision in *Baker* v. *Johnson* (21 N.Z.L.R. 268; 4 Gaz. L.R. 270), the plaintiff was bound to erect the escapes, he could not claim against his co-tenant credit for the moneys expended by him in the erection of the fire escapes, though had the lease and sublease not been in existence, and the money had been expended by the plaintiff as co-tenant, he could have claimed credit for them. NEWALL *v.* JOHNSON, 7 N.Z. Gaz. L.R. 85. [*New Zealand.*]

PARTNERSHIP.

Husband agent for wife.—Partnership is a personal relationship, and where a husband is nominally a partner with another person, but in reality merely an agent for his wife in such partnership, this does not constitute the wife a partner and disentitle her to claim against the partnership assets. However, under such circumstances it was *held* that the husband was entitled to an indemnity from his wife against all partnership losses and debts, and that the benefit of such indemnity passed on bankruptcy to the Official Assignee. *In re* WILTSHIRE AND SCOTT; *Ex parte* SCOTT, 24 N.Z.L.R. 354; 7 Gaz. L.R. 378. [*New Zealand.*]

Tenants for life and remaindermen—Profits—Partnership accounts.—Where a share in a partnership business is held by trustees in trust for tenants for life with remainders over, the trustees during the existence of the partnership ought not to bring into the estate income account any sum standing to the debit or credit of the partnership profit and loss account until it is ascertained whether such sum has been treated by the partners as an amount presently payable by or as income presently distributable among the partners in such partnership: *Bouch* v. *Sproule* (12 A.C. 395), and *In re Armitage*; *Armitage* v. *Gurnett* ([1893] 3 Ch. 337) applied. *In re* YOUNG; YOUNG *v.* ALDOUS, 5 S.R. 394; 22 W.N. 135. [*New South Wales.*]

Mortgage by administratrix of deceased partner.—The administratrix of a deceased partner and the surviving partner, who is carrying on the partnership business in pursuance of a provision in the deed of partnership, can give a valid mortgage over real estate, partnership property vested in them to secure the payment of money previously advanced to them, and extended partly in payment of debts incurred by the partnership during the lifetime of both partners, and partly in payment of debts incurred by the surviving partner in carrying on the business (*per* Stout C.J. and Edwards J). *In re Clough* (31 C.D. 324) followed. WALKER & WALKER *v.* CREAVEN, 7 N.Z. Gaz. L.R. 435; 8 N.Z. Gaz. L.R. 113. [*New Zealand.*]

Purchasers from partners and their personal representatives.—Purchasers or mortgagees of partnership property who deal with the surviving partner and the administratrix of the deceased partner, are not bound to enquire whether the purpose of the sale or mortgage is legitimate or not, or how the purchase or mortgage money is to be applied, and before a mortgage given over partnership property by the surviving partner and the administratrix of the decesased partner can be impeached by the next of kin of the deceased partner, they must show that the mortgagee knew that the money he was advancing was to be applied for the purposes of a breach of trust, and that they have suffered by reason of its misapplication (*per* Williams J.). WALKER & WALKER *v.* CREAVEN, 7 N.Z. Gaz. L.R. 435; 8 N.Z. Gaz. L.R. 113. [*New Zealand.*]

Dissolution.—A partnership agreement provided that certain covenants should take effect if the partnership should be dissolved in a certain manner. Subsequently an agreement for dissolution in a different manner from that contemplated by the first agrcement was entered into between the partners, containing a scheme complete in itself for the dissolution. *Held*, that the provisions of the first agreement were not to be read into the second. OWEN *v.* RAYNER, 8 N.Z. Gaz. L.R. 64. [*New Zealand.*]

—— **Sale — Trade marks — Goodwill.** — An agreement between the respondents, who were merchants, and the appellant, who was a tea expert, recited that the respondents had for some time past carried on business as general merchants, and had recently determined to extend their tea trade, and with that view to enter into an agreement with the appellant. The appellant was to undertake the sole charge of the tea department of the firm for a term of five years, and was to be a partner in the firm as regards the tea department only. The effect of the provisions of the agreement was that the appellant was to receive half of the profits of the tea department but would not be subject to any loss which might be incurred. He did not supply any capital. The tea brands then in use by the firm were to continue in the name of the firm, and any new tea brands registered were to be registered in the name of the firm (which continued as before, and did not include the appellant's name), but such tea brands were to belong to the appellant and to the respondents in equal half shares. At the end of the term of five years, in the event of no agreement for a continuance of the partnership being arrived at, the brands of tea in which the appellant and the respondents should then be interested were to be sold either by public auction or private contract, with liberty for either the appellant or the respondents to bid for and purchase the same. The appellant was to receive one-half of any profits standing to the credit of the tea department at the expiry of the five years, but it was clear, though not expressly so provided, that the capital and stock of the department were to remain with the respondents. *Held*, affirming the decision of Stout C.J. (23 N.Z.L.R. 791), that the terms of the agreement showed that the parties did not contemplate a sale of the goodwill of the tea business on the dissolution of the partnership, and that the appellant was not entitled to have the goodwill sold. *Held, also*, that sec. 77 of the Patents, Designs and Trade-marks Act,

1889, would not prevent a valid assignment of the trade-marks either to the appellant or to the respondents without an assignment of the goodwill of the tea business. BELL *v.* CULLING, 24 N.Z.L.R. 501; 7 Gaz. L.R. 165. [*New Zealand.*]

Goodwill.—The rights of vendors and purchasers of goodwill discussed. If the goodwill of a business is sold to one of the partners in the business at a valuation, it must be valued on the same footing as if it were sold to a stranger, *viz.*, on the footing that the purchasing partner, if he did not purchase would still be at liberty to set up the same business in the same locality, and also upon the footing that the other partner or partners might do likewise. The purchaser of the goodwill of a partnership business, carried on under the name of one of the partners, has the right to represent himself as carrying on the business formerly carried on by the partnership, but he cannot hold himself out as the person who formerly carried on the partnership business, nor can he object if each of the partners establishes in the same locality an exactly similar business in his own name, so long as neither of them represents that the business he is carrying on is the business previously carried on by the partnership. OWEN *v.* RAYNER, 8 N.Z. Gaz. L.R. 64. [*New Zealand.*]

Action between partners.—The appellant and respondent entered into a partnership for the purpose of acquiring certain agencies and floating a company to take them over and carry on the businesses. During the existence of the partnership the appellant made advances of money to the respondent for partnership purposes. The company was floated, and the appellant and respondent as vendors, transferred to it the various agencies in return for a large number of shares in the company. The appellant shortly afterwards brought an action at common law to recover from the respondent certain sums which he alleged to be due to him as a balance on accounts stated between them, for money had and received by the respondent to his use, the transactions out of which the claim arose being *prima facie* in respect of matters within the partnership agreement. *Held*, that the respondent was entitled to have the partnership wound up and accounts taken, and to an injunction restraining the appellant from proceeding with the common law action. Decree of A. H. Simpson, Chief Judge in Equity (5th September, 1904), varied by consent, and affirmed as varied. WILSON *v.* CARMICHAEL, 2 C.L.R. 190; 11 A.L.R. (C.N.) 38. [*New South Wales.*]

—— **Against co-partners in firm name.**—*See* PRACTICE. CAMPBELL *v.* OSWALD, 27 A.L.T. 98; 11 A.L.R. 412. [*Victoria.*]

PASSING OFF.

Particulars.—A defendant is entitled to know every material fact upon which the plaintiff relies, so that he may know the nature and character of the charge made against him, but in an action for passing off goods by the defendant as and for the goods of the plaintiff the names and addresses of the persons by and to whom the passing was effected is immaterial to the plaintiff's case, and therefore the defendant is not entitled to particulars of such names and addresses. NATIONAL STARCH CO. *v.* ROBERT HARPER & CO., 27 A.L.T. 35; 11 A.L.R. 335. [*Victoria.*]

Examination in camera.—In an action for passing off by the owner of a secret process of manufacture, where a fact in issue is the identity of the plaintiff's process with that of the defendant, cross-examination will be allowed as to the nature of the plaintiff's process, but the Court has jurisdiction to order that it be taken in camera, in the presence of counsel and one expert on each side, and to exclude the parties from such examination. SANDNER *v.* CURNOW, 1905 V.L.R. 648; 27 A.L.T. 85; 11 A.L.R. 483. [*Victoria.*]

PASTURES PROTECTION.

Owner—Insolvent.—A person who, although he has the legal estate in certain land, has been divested of all beneficial interest therein, and cannot exercise any legal right over the land without breach of duty, is not the "owner" of such land within sec. 15 of the Vermin Destruction Act, 1890. *Held*, therefore, that a Crown lessee of land, who had become insolvent, and who thereafter had become entitled to a grant of the land, but whose assignee had not become registered proprietor thereof, never having done anything in regard to the land since his insolvency or received any benefit therefrom, was not liable as owner for a breach of sec. 15 of the Vermin Destruction Act, 1890. GRAHAM *v.* JONES, 1905 V.L.R. 645; 27 A.L.T. 83; 11 A.L.R. 384. [*Victoria.*]

—— **Police officer in charge of police paddock.**—A police officer in charge of Crown lands attached to a police station and used for police purposes, cannot be proceeded against under sec. 49 of 1902 No. 111, as the owner of such land, for not destroying rabbits thereon. SELF *v.* COLE, 5 S.R. 326; 22 W.N. 70. [*New South Wales.*]

—— **Trustees of common.**—The trustees of a common appointed under the Commons Regulation Act, 1898, are personally liable under sec. 52 of the Pastures Protection Act, 1902, for failing to destroy rabbits on the

common. SELF *v.* MCMAHON, 22 W.N. 188. [*New South Wales.*]

—— **Executors.**—Service on one of two executors, even where such executor is not actively managing the estate, of a notice under the Rabbit Nuisance Act, 1882, requiring the "owner" to destroy rabbits, is sufficient to make both executors jointly liable if the notice is not complied with. FOUNTAIN *v.* MCDONNELL, 7 N.Z. Gaz. L.R. 14. [*New Zealand.*]

Rabbit Board—Assessment—"Available."—Available in sec. 22 of the Rabbit Boards Act, 1896, means available in the sense in which the word was used before the passing of the Act, that is, available for pastoral purposes. HARRISON *v.* COLLINS, 1905 Q.W.N. 72. [*Queensland.*]

A decision by the Justices under sec. 17 of the Rabbit Act, 1901, as to the assessment of a ratepayer is not conclusive as to the validity of the rate, but the Court of Equity has jurisdiction to enquire into and pronounce upon the legality of the rate as a whole. CANONBAR RABBIT BOARD *v.* GOLDSBROUGH, MORT & Co., 5 S.R. 1; 21 W.N. 253. [*New South Wales.*]

Notice to destroy vermin—Summons after acquittal—Burden of proof.—A notice to destroy vermin having once been given under sec. 14 of the Vermin Destruction Act, 1890, the owner may under sec. 15 be summoned any number of times, and notwithstanding he may have been acquitted on one of the charges. A summons under sec. 15 is not bad merely because the offence charged by it includes a period in respect of which a prior summons was dismissed. In order to upset a conviction under such subsequent summons, the burden is on the defendant of showing that the conviction was in respect of the period covered by the earlier summons. HUNTER *v.* WILLIAMS, 1905 V.L.R. 513; 27 A.L.T. 6; 11 A.L.R. 256. [*Victoria.*]

Materials furnished to Crown lessee—Liability of Board of Land and Works.—A shire council furnished a Crown lessee with fencing materials under the special fencing provisions of the Vermin Destruction Act, 1890. The lessee did not make any repayment of principal or interest payable in respect of the materials. The lease was afterwards forfeited. *Held*, that the Board of Land and Works on which the land had under the Act become vested was liable to the council for all the instalments of principal and for interest on those instalments which became due after the forfeiture. ARAPILES, PRESIDENT, &C., OF SHIRE OF, *v.* BOARD OF LAND AND WORKS, 11 A.L.R. 8. [*Victoria.*]

Rabbit proof fence—Contribution—Demand.—The notice of demand for contribution to the expense of a rabbit-proof fence should be given by the persons entitled to the contribution, or at least by some person whose authority to give the notice, is made perfectly evident. LARCOMBE *v.* PARKER; BANK OF NEW SOUTH WALES *v.* PARKER, 15 L.C.C. 217. [*New South Wales.*]

Form of information.—An information under sec. 49 of the Pastures Protection Act alleging that the defendant on one particular day failed "to fully and continuously destroy . . . . . *all* rabbits on the holding" was *held* to disclose no offence. *Ex parte* LOCK, 5 S.R. 322; 21 W.N. 89. [*New South Wales.*]

An information under sec. 49 of the Pastures Protection Act, for that "between the 28th October 1904 and 11th November 1904 A.J.A. being the occupier &c. . . . did fail to suppress and destroy to the satisfaction of &c. . . . . all rabbits then upon his land," was *held* to be defective in that it did not allege that the defendant "from time to time" failed to "fully and continuously" suppress and destroy rabbits. *Ex parte* WYSE, 5 S.R. 335; 22 W.N. 64. [*New South Wales.*]

Procedure.—The magistrate when hearing a charge laid under sec. 49 of the Pastures Protection Act refused to admit evidence in defence of the charge though he allowed the defendant to give evidence in mitigation of the penalty. The Full Court *held* that the magistrate was not bound by the Pastures Protection Board's decision and that he should have heard the evidence of both parties and determined the case in the ordinary way in accordance with secs. 77–80 of the Justices Act, 1902. *Ex parte* WATSON, 4 S.R. 656; 21 W.N. 248. [*New South Wales.*]

Civil or criminal proceedings—Prohibition after fine paid.—Proceedings under sec. 49 were held to be in the nature of criminal proceedings and a prohibition was granted, even though the fine had been paid. *Ex parte* LOCK, 5 S.R. 322; 21 W.N. 89. [*New South Wales.*]

PATENTS.

Combination of known appliances—Inventive faculty.—A combination of two or more known mechanical appliances, the result of which is to effect a new purpose, or to effect an old purpose with greater efficiency or economy, may be the subject matter of a patent if it involves some substantial exercise of the inventive faculty. The appellant claimed an injunction and damages against the the respondent for an infringement of two patents. The first was granted in 1899 for "an improved cane truck dray," and the second in 1900 for "improvements in cane truck drays." The object of both inventions was to facilitate the carriage and loading of cane in cane-fields. They consisted of ap-

pliances for enabling trucks fitted with flanged wheels suitable for running on rails to be carried on drays fitted with rails to and from tram lines laid in the cane-fields. Somewhat similar contrivances had been previously used in Queensland for the purpose of conveying vehicles fitted with flanged wheels from one place to another on an ordinary vehicle fitted for running on made roads. The object of the appellant's invention was to enable such vehicles to be taken economically and efficiently to any place where an ordinary wheeled vehicle could be taken. *Held*, that the appellant's second invention, being an adaptation of well-known mechanical contrivances to a new use, or to an old use with greater efficiency or economy, and requiring some substantial exercise of the inventive faculty, was a proper subject-matter of a patent. *Held, further*, as regards the defence of anticipation, that the novelty in the mode of the combination, resulting as it did in increased efficiency and economy, was sufficient to entitle the patent to protection against infringement. Decision of Supreme Court of Queensland (1904 Q.S.R. 191), reversed, and judgment of Power J. (*ibid.*) restored. WILLMANN *v.* PETERSEN, 2 C.L.R. 1. [*Queensland.*]

Prior user.—A defence of prior user in an action for infringement of a patent is sustained by proof that the article patented was before the date of the patent, in public use, by display or sale, and was of a character presenting in itself such means of knowledge to the public as to enable anyone of ordinary competence to discover the process of manufacture and to reproduce the article. *Quære*, whether the sale of a single specimen of the patented article would constitute proof of prior user. *Hancock* v. *Somerville* (Higgin's Digest 237) followed. WELSBACH LIGHT CO. *v.* LASCELLES, 27 A.L.T. 131; 11 A.L.R. 476. [*Victoria.*]

Infringement of foreign patent.—The Supreme Court of Victoria has no jurisdiction in respect of the infringement of a New South Wales patent. So *held* by Hodges and Hood JJ. (a'Beckett J. dissenting), on the ground that the cause of action is local, *i.e.* that the facts relied on as the foundation of the plaintiff's claim have a necessary connection with a particular locality. *British South Africa Co.* v. *Companhia de Mocambique* ([1893] A.C. 602), followed. By Hood J. on the ground also that the Supreme Court of Victoria cannot try an action for tort committed outside its jurisdiction, unless the very act complained of is wrong both by the foreign law, and by Victorian law. POTTER *v.* BROKEN HILL PROPRIETARY CO., 1905 V.L.R. 612; 27 A.L.T. 74; 11 A.L.R. 357. [*Victoria.*]

Enquiry as to damages.—When the plaintiff in an action for infringement of a patent obtains a decree, he is entitled to an inquiry as to damage (if he prefers that to an inquiry as to profits), unless the evidence at the hearing has established that no sensible damage can have been sustained. It is not usual to have all the evidence as to damage disclosed at the hearing. A decree in such an action will not be limited to such infringements as have been proved at the hearing, so as to limit the enquiry as to damages to such infringements, but will be, in general terms, that the defendant has infringed the plaintiff's patent, leaving it open, upon an enquiry as to damages, to prove the whole damage which the plaintiff may have sustained. THE WELSBACH LIGHT COMPANY OF AUSTRALASIA (LTD.) *v.* LOCHHEAD, 24 N.Z.L.R. 51; 7 Gaz. L.R. 13. [*New Zealand.*]

Appeal.—*Semble*, an appeal does not lie to the law officer from an order made by the Commissioner of Patents under sec. 29 (3) of the Patent Acts, 1890 (Victoria), for the payment by one party to an application for a patent of the other party's costs. Even if such an appeal does lie, no appeal lies from the law officer to the Supreme Court. *In re* DICKENSON; POTTER *v.* DICKENSON, 2 C.L.R. 668. 1905 V.L.R. 235; 26 A.L.T. 124; 11 A.L.R. 20. [*Victoria.*]

Discontinuance of action for infringement Costs.—*See* PRACTICE. FORTESCUE *v.* NORTHEY, 1905 V.L.R. 724; 27 A.L.T. 90; 11 A.L.R. 448. [*Victoria.*]

Costs.—The word "costs" in sec. 29 (3) of the Patents Act, 1890, includes the reasonable expense incurred by a party in employing a patent agent to conduct proceedings before the Commissioner of Patents for him, in obtaining evidence, and in securing the attendance of witnesses. Fees to scientific witnesses for qualifying themselves to make affidavits or to give evidence may properly be allowed by the Commissioner of Patents when fixing the amount of such costs. Decision of the Supreme Court *In re Dickenson's Application*; *Potter* v. *Dickenson* (1905 V.L.R. 235; 26 A.L.T. 124), affirmed. *In re* DICKENSON; POTTER *v.* DICKENSON, 2 C.L.R. 668; 1905 V.L.R. 235; 26 A.L.T. 124; 11 A.L.R. 20. [*Victoria.*]

PAWNBROKER.

Factories and Shops Act.—As to application of Factories and Shops Act to pawnbrokers, *see* YOUNG *v.* HALL, 1905 S.R. (Q.) 151; Q. W.N. 57. [*Queensland.*]

PAYMENT.

By telegraph.—*See* JUDGMENT. OSBORNE *v.* ANDERSON, 1905 V.L.R. 427; 26 A.L.T. 225; 11 A.L.R. 239. [*Victoria.*]

Of mortgage debts.—*See* MORTGAGE.

Pleading.—*See* PLEADING.

PETTY SESSIONS.

See JUSTICES.

PLEADING.

Evidence in other actions.—A pleading delivered by a person in one action is not in another action, by or against that person, admissible as evidence against him of the statements therein contained, even when he sues or is sued in the same capacity in both actions. AUSTIN *v.* AUSTIN, 1905 V.L.R. 564; 27 A.L.T. 17, 43; 11 A.L.R. 337. [*Victoria.*]

Declaration and statement of claim—Money had and received.—An action for money had and received will not lie against trustees for income claimed to be due by a tenant for life of the income of residue under a will, unless there has been an admission by the defendants that the sum claimed is held by them for the use of the plaintiff. The remedy in equity before the Supreme Court Act, 1878, was, and the only remedy still is, an action for administration of the estate, and, in administering the estate, debts, testamentary expenses, interest, and annuities, must first be provided for in a due course of administration. PHILLIPSON *v.* DOWNER, 1904 S.A.L.R. 128. [*South Australia.*]

In 1893 the plaintiff managed a business for the defendant. The plaintiff and the defendant both signed cheques on the firm's banking account. In 1895 the plaintiff purchased the business from the defendant and subsequently became insane. The plaintiff's wife then carried on the business and the defendant drew a cheque for an amount standing to the credit of the plaintiff's account, handed it to the bank manager, who transferred the money to the credit of the plaintiff's wife. The plaintiff recovered, and upon being released sued the defendant for the amount transferred. *Held*, that an action for money had and received would not lie. NEILSON *v.* MOSS, 22 W.N. 116. [*New South Wales.*]

—— **Particulars of demand—Work done by land agent.**—In an action by a land agent for fees due in connection with an application to a Land Board for a lease and for money paid, the plaintiff was ordered to give further particulars for the purpose of pleading, as to the dates of attendances and out of pocket expenses. WILLIS *v.* DOYLE, 22 W.N. 33. [*New South Wales.*]

—— **Particulars of claim in passing off actions.** — *See* PASSING OFF. NATIONAL STARCH CO. *v.* ROBERT HARPER & CO., 27 A.L.T. 35; 11 A.L.R. 335. [*Victoria.*]

—— **Bond—Rule 490 of Code of Civil Procedure.**—*See* DEED AND BOND. MAYOR, &C. OF PETONE *v.* PALMER, 7 N.Z. Gaz. L.R. 420. [*New Zealand.*]

—— **Grounds not raised by bill—Impeaching mortgage.**—*See* POWER OF APPOINTMENT. GILBERT *v.* STANTON, 2 C.L.R. 447; 11 A.L.R. 208. [*Tasmania.*]

—— **Interest not asked for.**—Where the plaintiff had not specifically claimed interest (in an action of specific performance), and had not asked generally for such judgment as the Court should consider him entitled to, *held*, that a direction as to interest for a period during which it was disputed whether the purchaser had been in possession, should not be included in the decree. BAILY *v.* CAMPBELL, 7 N.Z. Gaz. L.R. 658. [*New Zealand.*]

—— **Amendment.** — An application to amend a statement of claim for (*inter alia*) income, alleged to be due to the plaintiff as tenant for life of the income of residue under a will, by adding a prayer for the usual order to administer the testator's estate, is not too late although only made at the close of the plaintiff's reply. PHILLIPSON *v.* DOWNER, 1904 S.A.L.R. 128. [*South Australia.*]

The defendant, who was the owner and editor of a daily paper, published an anonymous letter reflecting on the conduct of the plaintiff, and which the latter alleged to be libellous. The defendant was also owner and editor of a weekly paper which, though bearing a different name, was practically a weekly issue of the daily paper. A few days subsequent to the publication of the alleged libel in the daily paper it also appeared in the weekly paper. In his statement of claim the plaintiff set out both publications, but there was only one claim for damages. Application was made to set aside the proceedings on the ground that each publication constituted a separate cause of action, and that therefore separate damages should have been claimed in respect of each cause. *Held*, that though the proceedings should not be set aside, the defendant was entitled to an order requiring the plaintiff to amend his statement of claim by claiming separate damages in respect to each cause of action. MCCRACKEN *v.* WESTON, 24 N.Z.L.R. 248. [*New Zealand.*]

A statement of claim which discloses two causes of action, but does not separate the claim for damages, will not be struck out or set aside, but will be amended. LOWE *v.* CRESPIN, 7 N.Z. Gaz. L.R. 368. [*New Zealand.*]

Where the plaintiff borough had specifically claimed only a declaration that the road in question was a public street and was vested in the borough, and such other relief as the

Court might deem it entitled to, but the evidence showed that the defendant had been interfering with the use of the land as a street, *held*, that an amendment might be made, if necessary, adding a claim for an injunction restraining the defendant from further interference, and an injunction granted. *Quære*, whether any amendment was necessary. But *quære, also*, whether the Supreme Court has, under the rules of 1882, the power to make a merely declaratory decree. THE MAYOR, COUNCILLORS, AND BURGHESSES OF THE BOROUGH OF LOWER HUTT *v.* YEREX, 24 N.Z.L.R. 697. [*New Zealand.*]

Plea and statement of defence—General issue.—Principal and agent.—In an action against the principals, upon a contract made by an agent ostensibly on their behalf, but really, to the knowledge of the other party, for the agent's own benefit, the defendant may give evidence, under a plea of *non assumpsit*, of all circumtsances which tend to show that the agent, in making the contract, was acting without authority, to the knowledge of the plaintiff, even though that evidence may also show that there was fraudulent collusion between the plaintiff and the agent in making the contract. The mere fact that the evidence would disclose such fraud, does not render it necessary to plead the facts specially under Rule 67. Decision of the Supreme Court ([1904] 4 S.R. (N.S.W.) 665), reversed. LYSAGHT BROS. & CO., LTD., *v.* FALK; FALK *v.* LYSAGHT BROS. & CO., 2 C.L.R. 421; 11 A.L.R. 149; 4 S.R. 665; 21 W.N. 219. [*New South Wales.*]

—— **Account stated.—Allowance of cross demands.**—In an action at common law to recover a balance of rent due under a covenant in an indenture of lease, the defendants pleaded, as a plea on equitable grounds, that prior to the execution of the lease it was agreed that the plaintiff should allow the defendants certain deductions from the rent for the first six months of the term; that the defendants executed the lease upon the faith of that agreement; that the plaintiff in accordance with the agreement allowed the defendants the deductions agreed upon; that the defendants paid the plaintiff the remainder of the rent due under the covenant, and the plaintiff accepted it in satisfaction and discharge of the whole of the rent due under the covenant; and that the plaintiff was suing for the rent agreed to be allowed off to the defendants, in fraud of the agreement. At the trial letters which passed between the parties prior to the execution of the lease were tendered in support of this plea and rejected. *Held*, that, whether the alleged agreement was or was not collateral to the lease, the plea was in effect an allegation of the allowance of cross demands between the parties upon an account stated, and payment of the balance, and afforded substantially a good defence at common law, and that the letters were admissible in evidence in support of it. *Callander* v. *Howard* (10 C.B. 290) followed. HARRIS *v.* SYDNEY GLASS AND TILE CO., 2 C.L.R. 227; 4 S.R. 454; 11 A.L.R. 49. [*New South Wales.*]

—— **Tender—Payment into Court.**—Under O. XXVI., r. 2, tender cannot be pleaded unless the money is paid into Court. This rule applies to actions on covenants in mortgage deeds. BUSCH *v.* ANDERSON, 1905 Q.W.N. 42. [*Queensland.*]

—— **Construction of plea of waiver.**—*See* HUSBAND AND WIFE. MCNAGHTEN *v.* PATERSON; PATERSON *v.* MCNAGHTEN, 2 C.L.R. 615; 11 A.L.R. 263; 5 S.R. 90; 22 W.N. 25. [*New South Wales.*]

—— **Time for pleading—Amended statement of claim.**—Action removed from magistrate's Court by defendant. The case was set down by the plaintiff on 15th September for trial on 21st. On the 16th, plaintiff filed and served an amended statement of claim, setting up an alternative contract. *Held*, that the defendant had the same time to plead to the amended statement of claim as he had to the original claim, and that the case could not be heard, as it was not ripe for trial on the 21st. OVERTON *v.* WEBB, 8 N.Z. Gaz. L.R. 3. [*New Zealand.*]

Counterclaim—RR. 451 to 465 Civil Code.—*See* EDMONDS *v.* EDMONDS, 24 N.Z.L.R. 440. [*New Zealand.*]

Demurrer—Notice of intention to object—Right to begin.—Defendant having demurred to the replication, the plaintiff gave notice of intention to object to the plea. *Held*, that this was not a cross demurrer and the defendant began. CLISDELL *v.* GIBNEY, 4 S.R. 670; 21 W.N. 237. [*New South Wales.*]

Service of pleadings.—*See* PRACTICE.

POLICE.

Arrest without warrant.—*See* CRIMINAL LAW.

Rabbit destruction.—*See* PASTURES PROTECTION. SELF *v.* COLE, 5 S.R. 236; 22 W.N. 70. [*New South Wales.*]

POLICE OFFENCES.

Insulting words.—"Insulting words" in sec. 7 (1) (*b*) of the Police Offences Act, 1891, means particular words of insult, and to constitute an offence there must be something insulting in the words themselves. "If you don't pay by next Saturday I'll

summons you. If I can't get it by summons, I'll take the worth of it out of you. I have heard a couple of doors up what you are," are not insulting words. SELLERS *v.* BISHOP, 11 A.L.R. (C.N.) 61. [*Victoria.*]

Billiard rooms—Closing hours.—*See* MUNICIPALITY. TWOHILL *v.* FAIRHALL, 24 N.Z. L.R. 535; 7 Gaz. L.R. 211. [*New Zealand.*]

Injury or damage to property—Killing dog.—Sec. 18 (vii) of the Police Offences Act, 1890, is not limited to inanimate property, and therefore, injury or damage to a dog comes within that sub-section. The words "injury or damage" in the sub-section include total destruction, such as the killing of an animal. The doctrine of *ejusdem generis* discussed. MCDONALD *v.* CARTER, 1905 V.L.R. 181. [*Victoria.*]

Gaming.—*See* GAMING AND WAGERING.

Lottery.—*See* GAMING AND WAGERING.

Vagrancy.—*See* VAGRANCY.

POWER OF APPOINTMENT.

Benefit to appointor—Good faith.—Notwithstanding the rule that the appointor under a power must at the time of the exercise of that power, and for any purpose for which it is used, act with good faith and sincerity, and with an entire and single view to the real purpose and object of the power, and not for the purpose of accomplishing or carrying into effect any object beyond the purpose and interest of the power, when an arrangement, in pursuance of which the appointment of a reversionary estate is made, is such that in substance the appointee gets the full value of the reversion, the fact that the appointor derives a benefit corresponding to the value of his life estate is not sufficient to invalidate the appointment. By indenture of settlement, property consisting of about 247 acres of unimproved land was settled on S.A.S., a married woman for life with restraint on anticipation, and with remainder to such of her children as she should appoint, and in default of appointment to her children absolutely. S.A.S. had four sons and six daughters. In exercise of the power, she appointed at various times three several portions of the land to three of her sons, leaving a portion of 35 acres unappointed but her intention to appoint this portion to her fourth son John William was well known to her family. By deed of 1st December, 1891, S.A.S. purported to mortgage the rents of the whole of the property comprised in the settlement to one Harvey to secure an advance by him of £450, £135 of which was applied for the purpose of paying off her debts, £280 for the purpose of erecting a new dwelling upon, and further sums in improving, the 35 acres. In March, 1898, Harvey, whose debt then amounted to about £440, asked for payment. At this time the 35 acre block was under lease for a term of four years to John William and another, at a rental of £120 per annum, but the rent was then in arrear to the extent of about £130. On 16th April, 1898, S.A.S. executed a deed of appointment of the 35 acres in favour of her son J.W. An order of the Supreme Court was obtained on 28th April, 1898, removing the restraint on anticipation, and on 3rd May, 1898, she and J.W. executed a mortgage in fee to the defendants, the Tasmanian Loan Guarantee and Finance Co., to secure £500 the receipt of which was asknowledged by both mortgagors. In a suit to impeach the appointment as a fraud on her power, the Supreme Court of Tasmania *held*, on the evidence that it was not proved that the appointment was executed with a view to the giving of the mortgage. *Held*, reversing on this point the finding of the Supreme Court of Tasmania, that, on the written and uncontradicted evidence, the appointment and the mortgage formed parts of one transaction; but *held*, affirming the decision of the Supreme Court of Tasmania, but on different grounds, that having regard to all the facts, including the age of the tenant for life, the debt due by the appointee, and the fact that a large sum had been expended by the appointor since the date of the settlement in improving the settled property which might have been charged upon the land in the hands of the appointee in favour of other objects of the power, the plaintiffs had failed to establish affirmatively that the mortgage money was not distributed between the mortgagors with due regard to the respective interests of the appointor and appointee. *Held, further*, reversing the decision of the Supreme Court of Tasmania, that, the appointment to J.W., being a valid exercise of the power, he had a good title to the estate in remainder, and that his mortgage to the Finance Co. could not be impeached on grounds not raised by the bill. GILBERT *v.* STANTON, 2 C.L.R. 447; 11 A.L.R. 208. [*Tasmania.*]

Sufficiency of execution. — *See* LAND TRANSFER. *Ex parte* THE NEWCASTLE BUILDING AND INVESTMENT CO., 5 S.R. 237; 22 W.N. 101. [*New South Wales.*[

POWER OF ATTORNEY.

Limitation of authority by recital.—A recital in a power of attorney that the person executing it is about to leave the colony, and is desirous of appointing some one to act for him does not limit the powers of the person appointed to act during his absence where it

is not stated, either in the recital or elsewhere, that the appointment is to act during his absence. *Danby* v. *Coutts & Co.* (29 Ch. D. 500), distinguished. FELL *v.* THE PUPONGA COAL AND GOLD-MINING COMPANY OF NEW ZEALAND, LTD., 24 N.Z.L.R. 758. [*New Zealand.*]

Memorandum under Statute of Frauds.—A power of attorney showing that a person has been appointed manager is a sufficient memorandum in writing of a previous verbal appointment as manager to satisfy the Statute of Frauds (assuming the statute to apply). FELL *v.* THE PUPONGA COAL AND GOLD MINING CO. OF NEW ZEALAND, LTD., 24 N.Z.L.R. 758. [*New Zealand.*]

Application by holder for re-sealing of foreign letters of administration.—*See* PROBATE AND ADMINISTRATION. *In the will of* HOLLINGWORTH; PERMEZEL *v.* HOLLINGWORTH, 1905 V.L.R. 321; 26 A.L.T. 213; 11 A.L.R. 217. [*Victoria.*]

PRACTICE.

JURISDICTION—Relief against forfeiture—Suit.—*Quære*, whether the Court has power under its general equitable jurisdiction to relieve against a forfeiture clause in a deed of bailment. If it has, such relief must be sought in a suit. *Hardy* v. *Adams* (3 N.Z. Gaz. L.R. 120), followed. TURKINGTON *v.* TURKINGTON, 7 N.Z. Gaz. L.R. 92, 497. [*New Zealand.*]

—— **Subject-matter below £10 in value—Special circumstances.**—A suit cannot be brought in Equity, the subject-matter of which is below £10 in value, unless the suit is instituted to establish a general right or there is some other special circumstance rendering it reasonable that such suit should be retained. The mere fact that the suit is brought to enforce a statutory charge is not such a special circumstance. *Westbury-on-Severn Rural Sanitary Authority* v. *Meredith* (30 Ch. D. 387), followed. BOROUGH OF RANDWICK *v.* DUNCAN, 4 S.R. 754; 21 W.N. 256. [*New South Wales.*] *And see* ROSMAN *v.* KENNA, 21 W.N. 258, *col.* 255.

PARTIES—Infant—Next friend—Married woman.—*See* HUSBAND AND WIFE. SALTON *v.* ELLERKER, 26 A.L.T. Supp. 1. [*Victoria.*]

—— **Action by partner.**—Order XVI., r. 15, does not apply to the case of a partner suing a firm, and therefore does not enable a member of a firm to sue his partners under the firm name. CAMPBELL *v.* OSWALD, 27 A.L.T. 98; 11 A.L.R. 412. [*Victoria.*]

—— **Registrar of titles.**—In a claim for declaration of title to land under Transfer of Land Act, 1904, by adverse possession, where the whereabouts of the registered proprietor were unknown, the Registrar of Titles was *held* to have been properly made sole defendant. THOMSON *v.* BYRNE, 11 A.L.R. (C.N.) 49. [*Victoria.*]

—— **To originating summons.**—*See Originating Summons, col* 252.

—— **To appeal.**—*See Appeal, col.* 255.

WRIT AND STATEMENT OF CLAIM—Special endorsement—Covenant to indemnify.—A claim for a sum of money arising under a covenant to indemnify is not a subject for a specially indorsed writ under Order III., r. 6, where the sum is not ascertained or fixed by the deed. FINN *v.* GAVIN, 1905 V.L.R. 93. [*Victoria.*]

—— **Money advanced.**—Where by the particulars in the writ there was a claim for money advanced, and the plaintiff sued under the common counts, *held*, that the plaintiff

was not precluded by his particulars from recovering the money as money received by the defendant to the use of the plaintiff. DALEY *v.* KNOLWES, 22 W.N. 194. [*New South Wales.*]

—— **Service of writ on Sunday—Ca. re.**—Notwithstanding O. XCIII., r. 15, a writ of summons may be served on a Sunday, when it is served on a defendant at the time of his arrest under a *ca. re.*, in accordance with O. LXXVIII., r. 5 and the Common Law Process Act, 1867 (31 Vic. No. 4, sec. 23). DOYLE *v.* SAUNDERS, 1905 Q.W.N. 5. [*Queensland.*]

—— **Foreign corporation—Business domicil.**—Defendants, an American company, appointed G. & Co., who carried on business in Australia as general merchants and importers, their sole agents for the sale of their goods in Australia, allowing them a commission. But all goods ordered by G. & Co. were paid for by G. & Co. before shipment, and imported and sold by G. & Co. as their own goods, G. & Co. taking the benefit of any profit over and above their commission, and bearing any loss. This was the general course of business, but two years before writ issued the defendants had, through G. & Co. as their agents, made four or five contracts for the sale of large consignments of their goods to traders in N.S.W., for breach of one of which contracts the present action was brought. *Held*, that the defendants had not a business domicil in N.S.W., and service of the writ on G. & Co. was set aside. DENHAM BROTHERS *v.* ARMOUR & COMPANY, 22 W.N. 142. [*New South Wales.*]

—— **Service out of jurisdiction.**—The statement of claim in an action claimed, amongst other things, damages for a breach in London of a contract alleged to have been made in London respecting land in New Zealand. *Held*, that the subject-matter of the action was not land within the colony, or any act, deed, will, or thing affecting such land, within the meaning of sub-sec. 5 of Rule 48 of the Code of Civil Procedure, and that leave could not therefore be given to serve the writ of summons out of the colony. Leave can only be granted under Rule 48 when the whole of the relief claimed comes within the rule. JONES *v.* FLOWER, 24 N.Z.L.R. 447. [*New Zealand.*]

The Court in the exercise of its discretion discharged an *ex parte* order allowing service of a statement of claim out of the jurisdiction on the administrator in Germany of a German will, in a suit where a claim was made against the foreign estate by an assignee of an alleged legatee resident in this State, although the money which was the object of the suit was within the jurisdiction and in the control of another defendant to the suit. The order in *Ryan* v. *Von Buri* (20 W.N. 128), discharged. RYAN *v.* VON BURI, 4 S.R. 635; 21 W.N. 244. [*New South Wales.*]

By an order made *nunc pro tunc*, on a motion for a decree in default of appearance, substituted service of a statement of claim as already effected out of the jurisdiction was allowed in a case where it was clear that the defendant had evaded personal service. MUNICIPAL DISTRICT OF RYDE *v.* BELL, 22 W.N. 95. [*New South Wales.*]

—— **Service and Execution of Process Act.**—*See* FEDERAL LAW.

APPEARANCE—Conditional.—The defendant wishing to object to the jurisdiction entered a conditional appearance. The plaintiff, having applied to strike it out, the hearing of the application was adjourned to enable the defendant to apply to strike out the writ. The latter application having been refused, the conditional appearance was set aside with costs. MAYERS & Co. *v.* JOHNSON & Co. (2), 1905 Q.W.N. 40. [*Queensland.*]

VENUE—Action for slander—Refusal to make order delaying trial of action.—The Court refused an application by a defendant in a slander action for change of venue to a Circuit Court where the trial of the action would be delayed, although the parties and their witnesses were resident in the circuit town, on the ground that as the plaintiff's reputation was involved he would be prejudiced by the delay. WILLS *v.* GARRETT, 22 W.N. 59. [*New South Wales.*]

—— **Validity of Rules of Court.**—Rules 116, 117 give power to a Judge in Chambers to make orders for change of venue, and such rules are *intra vires* sec. 268 of the C.L.P. Act, 1899. WILLS *v.* GARRETT, 22 W.N. 59. [*New South Wales.*]

DISCONTINUANCE—Leave to discontinue—Terms.—In an application before the hearing for leave to discontinue an action for the infringement of a patent an order will not be made on the condition that the plaintiff pays the costs of particulars of objection delivered by the defendant. FORTESCUE *v.* NORTHEY, 1905 V.L.R. 724; 27 A.L.T. 90; 11 A.L.R. 448. [*Victoria.*]

—— **Case adjourned.**—Where a case has been called on and the hearing adjourned by consent of counsel the adjournment is the act of the Court, and the trial must be taken to have commenced, and the plaintiff is not, thereafter, entitled to file a discontinuance of the action. WATTS *v.* HAWKINS, 7 N.Z. Gaz. L.R. 656. [*New Zealand.*]

NOTICE OF TRIAL.—The plaintiffs were ordered to give notice of trial for the next sittings at Townsville which were fixed for the 15th August. On the 1st August the plaintiffs gave notice for hearing before a

Judge without a jury on the 17th August. *Held*, that the action was not dead on the 1st August, and that the notice of trial was valid. HEDGES *v.* HOWES; HOWES *v.* HEDGES, 1905 S.R. (Q.) 192; Q.W.N. 66. [*Queensland.*]

SUBPOENA.—*See* EVIDENCE.

INTERROGATORIES—Privilege of Parliament.—The Speaker's certificate granted under sec. 3 (2) of the Privileges Act, 1866, Amendment Act, 1872, does not exempt from attendance on summons for interrogatories; its effect is confined to attendance at the trial. SEDDON *v.* TAYLOR, 7 N.Z. Gaz. L.R. 389. [*New Zealand.*]

—— **Defamation.**—Interrogatories whether the defendant had used the words sued upon, or similar words, allowed. *Dalglish* v. *Lowther* ([1899] 2 Q.B. 590); *Martin* v. *Trustees of British Museum*, (10 T.L.R. 215); and *Elliott* v. *Garnet* ([1902] 1 K.B. 870), followed. SEDDON *v.* TAYLOR, 7 N.Z. Gaz. L.R. 389. [*New Zealand.*]

—— **Corporation.**—Where a defendant by his pleading alleged that the plaintiff corporation had knowledge of a certain material fact the latter was allowed, on the footing of asking for further particulars, to administer an interrogatory to ascertain what officer, servant, or agent, or what set of officers, servants or agents of the corporation was alleged to have had knowledge of the fact in question. BELLAMBI COAL CO., LTD. *v.* BARRY, 4 S.R. 748; 21 W.N. 255. [*New South Wales.*]

—**Subject-matter.**—Each party is entitled to interrogate the opposite party as to any fact in issue in the pleadings even though the information sought relates primarily to the case of the party interrogated. LEVISTON *v.* NARRACAN, PRESIDENT OF SHIRE OF, 27 A.L.T. 58; 11 A.L.R. 298. [*Victoria.*]

—— **Extension of time for answering.**—Where an order is made by a Judge dismissing an action in default of filing answers to interrogatories by a certain date, and such answers are not so filed, a Judge has no power on a subsequent application to extend the time. The Court may, however, extend the time for appealing against the order (O. 60, r. 7, Eng. O. 64, r. 7), and having then allowed the appeal, may extend the time for filing the answers. JOHNSON & CO., LTD. *v.* CLIFFORD, 7 W.A.L.R. 130. [*Western Australia.*]

—— **Further and better answers—Matters of belief—Executors.**—In answer to interrogatories to be answered by trustees, they stated generally that they had no personal knowledge, that their information was partly derived from documents mentioned which were open to inspection by the opposite party, and partly derived from documents and conversations which they claimed to be privileged, and that any belief they had was founded on such information. *Held* (affirming the judgment of Hood J.), that no further answer should be ordered. *Per* a'Beckett J.: Where interrogatories as a whole are such that in the opinion of the Judge the answering of them would be very laborious, and would produce no result commensurate with the labour incurred, he may in his discretion disallow all of them or may refuse to order further answers, without dissecting them to see whether some of them are reasonable and fit to be answered, or are capable of being more clearly answered. AUSTIN *v.* AUSTIN, 1905 V.L.R. 377; 26 A.L.T. 211; 11 A.L.R. 183. [*Victoria.*]

ORIGINATING SUMMONS — Complicated questions.—Order LV., r. 5 of the Rules of the Supreme Court, 1900, is intended for simple matters, and the Court will not under it investigate complicated matters requiring the examination of lengthy documents or the determination of disputed facts. *Semble*, the rule is confined to the equitable jurisdiction, and does not apply to an action of ejectment. *Equity Trustees, &c. Co. Ltd.* v. *Tanswell* (24 A.L.T. 214; 28 V.L.R. 688), discussed. MCCRINDLE *v.* AUSTRALIAN PRODUCERS' AND TRADERS' CO., 1905 V.L.R. 575; 27 A.L.T. 81; 11 A.L.R. 385. [*Victoria.*]

—— **Mortgage—Existence or validity of charge.**—The Court of Equity has clear jurisdiction on originating summons to enquire into the validity or existence of a mortgage or charge, but in the exercise of its discretion it will always refuse to do so where the question depends upon difficult or complicated questions of fact which may more conveniently be tried on oral evidence. In such cases the plaintiff must proceed by suit. *Per* Walker J.: Rule 4 of Schedule IV. to the Equity Act, 1901, is a beneficial rule which should receive a liberal interpretation. CANONBAR RABBIT BOARD *v.* GOLDSBROUGH, MORT & CO., LTD., 5 S.R. 1; 21 W.N. 253. [*New South Wales.*]

—— **Mortgage — Re-entry by lessor—Equity procedure Act (No. 4) (Tasmania), (57 Vict. No. 13), secs. 3, 4.**—The Equity Procedure Act (No. 4) (Tasmania), (57 Vict. No. 13), applies only to cases where the rights of the parties, or of those in possession under them, are regulated by a mortgage either legal or equitable, and therefore, that the legal right of a lessor to re-enter under the conditions of a lease cannot be litigated either on equitable or legal grounds on an originating summons by a mortgagee of the term for foreclosure against the lessee. CAIRNS *v.* BURGESS, 2 C.L.R. 298; 11 A.L.R. 244. [*Tasmania.*]

—— **Receiver—Injunction.**—Sec. 22 of the Equity Act, 1901, though differently expressed

is to the same effect as sec. 100 of the Judicature Act, 1873, and therefore a proceeding properly commenced in Equity under the Rules of Court by originating summons is a suit, and in such a proceeding the Court has power to appoint a receiver and grant an injunction. BROWNE *v.* BOWDEN, 4 S.R. 740; 21 W.N. 254. [*New South Wales.*]

—— **Sale.**—Clause (f) of Rule 519B, under which the approval of any sale, purchase, compromise, or other transaction may be the subject of an originating summons, does not give the Court power to order a sale on an originating summons. *In re Robinson*; *Pickard v. Wheater* (31 Ch. D. 247), followed. *In re* BUCK; SNELSON *v.* BUCK, 24 N.Z.L.R. 148. [*New Zealand.*]

—— **Parties—Trustees.**—It is not necessary to join as parties to an originating summons all the trustees who are severally liable for a breach of trust. EQUITY TRUSTEE AND AGENCY CO. *v.* FENWICK, 1905 V.L.R. 154; 26 A.L.T. 137; 11 A.L.R. 15. [*Victoria.*]

—— **Two estates—Costs.**—Questions relating to two estates dealt with on one summons, and costs apportioned between the estates. *In the will of* MCCORKINDALE; HEATH *v.* MCCORKINDALE, 26 A.L.T. 238; 11 A.L.R. 173. [*Victoria.*]

TRIAL—Adjournment—Action against member of General Assembly.—*See* PARLIAMENT. SEDDON *v.* TAYLOR, 24 N.Z.L.R. 198; 7 Gaz. L.R. 387. [*New Zealand.*]

—— **Preliminary point—Right to begin.**—Where a plaintiff has, under Rule 155, set down for argument a point of law raised by the defendant in his statement of defence, the defendant has the right to begin. BOROUGH OF RANDWICK *v.* DUNCAN, 4 S.R. 754; 21 W.N. 256. [*New South Wales.*]

—— **Nonsuit—Appeal—Contractors' and Workmen's lien.**—*See* LIEN. HAYNES *v.* MCKILLOP, 7 N.Z. Gaz. L.R. 478. [*New Zealand.*]

—— **Passing-off action—Cross examination in camera—Exclusion of parties.**—*See* PASSING OFF. SANDNER *v.* CURNOW, 1905 V.L.R. 648; 27 A.L.T. 85; 11 A.L.R. 483. [*Victoria.*]

Jury.—*See* JURY.

VERDICT—Entry of verdict against finding of jury.—If a jury finds that the defendant has infringed a legal right of the plaintiff, entitling the plaintiff to at least nominal damages, and the jury finds, further, contrary to the Judge's direction, that the plaintiff has suffered no damage by such infringement, the Court can, under Rule 567 of the Code of Civil Procedure, ignore the latter finding, and enter judgment for the plaintiff with nominal damages. RYDER *v.* HALL, 7 N.Z. Gaz. L.R. 442. [*New Zealand.*]

—— **Verdict against evidence—Entry of judgment.**—*See* JUDGMENT.

JUDGMENT.—*See* JUDGMENT.

DECREE—Declaratory decree.—*See* PLEADING. MAYOR, &C. OF LOWER HUTT *v.* YEREX, 24 N.Z.L.R. 697. [*New Zealand.*]

—— **Interest not claimed.**—*See* PLEADING. BAILY *v.* CAMPBELL, 7 N.Z. Gaz. L.R. 658. [*New Zealand.*]

—— **Suspension—Appeal to High Court.**—*See* FEDERAL LAW. BENNETT *v.* BROWNE, 22 W.N. 185. [*New South Wales.*]

—— **Offer in statement of defence not accepted.**—When a plaintiff, disregarding an offer made in the statement of defence, brought a suit to a hearing and failed, the Court refused to make a decree in terms of the offer. LANGLEY *v.* FOSTER, 22 W.N. 214. [*New South Wales.*]

EXECUTION.—*See* ARREST—EXECUTION.

ATTACHMENT.—*See* ARREST—CONTEMPT OF COURT.

STAY OF PROCEEDINGS—Jurisdiction of Court to grant.—The Court has inherent jurisdiction to stay the proceedings in an action, to prevent injustice being done. FERRIS *v.* LAMBTON, 22 W.N. 56. [*New South Wales.*]

—— **Vexatious and frivolous action.**—The plaintiff, a person declared to be of unsound mind, was, under an order signed by his committee, removed from his house and detained in a private asylum, all proceedings, having been regularly taken under the Lunacy Act, and the action of the committee being taken in good faith and with due care. An action against the solicitors of the committee claiming damages for assault and false imprisonment was stayed as being frivolous and vexatious. MCLAUGHLIN *v.* WESTGARTH, 4 S.R. 660; 21 W.N. 225. [*New South Wales.*]

In an action for damages against the Sydney Harbour Trust Commissioners for slander uttered by one of their servants the proceedings were stayed on the ground that the action was frivolous and vexatious, there being no evidence that the slander was uttered by the servant in the course of his employment or for the defendants' benefit. AVERY *v.* SYDNEY HARBOUR TRUST COMMISSIONERS, 22 W.N. 54. [*New South Wales.*]

—— **Claim under £10—Amount paid before service of writ.**—The defendant, without

receiving a letter of demand, was sued for £9 1s. 9d. for goods sold and to be paid for on delivery. This amount was paid before service of the writ but the defendant refused to pay the costs of the writ. An application to stay the proceedings was refused. ROSMAN *v.* KENNA, 4 S.R. 754; 21 W.N. 258. *And see* BOROUGH OF RANDWICK *v.* DUNCAN, 4 S.R. 754; 21 W.N. 258, *col.* 248. [*New South Wales.*]

—— **Judgment of High Court—Appeal to Privy Council.**—The Full Court has no jurisdiction to stay proceedings on a judgment entered in the Supreme Court in pursuance of a judgment of the High Court, pending application for leave to appeal to the Privy Council. Where there is no appeal as of right, no stay should be granted. BECHTEL *v.* GOODE, 7 W.A.L.R. 112. [*Western Australia.*] *See* BENNETT *v.* BROWNE, 22 W.N. (N.S.W.) 185.

—— **Final judgment—Taxation of costs—Legal Practitioners Act (1898 No. 22), sec. 39.**—A stay of proceedings will not be granted after judgment has been signed, in pursuance of an order made under sec. 39 of the Legal Practitioners Act, 1898, for costs due under the certificate of a taxing officer. *In re* FREEHILL, 22 W.N. 98. [*New South Wales.*]

SPECIAL CASE—Form of.—On a special case for the construction of the will, the will was not set out in the case itself, nor was the effect of it given, but the whole will, many parts of which were wholly irrelvant to the enquiry was annexed to the special case. *Held*, that this was not a concise statement of the facts and documents necessary for the determination of the questions of law raised within the meaning of O. XXXVIII., r. 1. QUEENSLAND TRUSTEES *v.* FINNEY, 1905 Q.W.N. 35. [*Queensland.*]

—— **From justices.**—*See* JUSTICES.

APPEAL — Parties. — *Cestuis que trustent* added as parties after decree against trustees, with leave to attend taking of accounts, *held* only entitled to succeed on appeal by showing that the decree was erroneous on its merits, or that they had a defence on the merits not brought before the Court. DAVIES *v.* DEPUTY OFFICIAL ASSIGNEE OF DAVIES, 24 N.Z.L.R. 161; 7 Gaz. L.R. 262. [*New Zealand.*]

—— **From Judge in Chambers—Co-ordinate jurisdiction—Matters of procedure.**—Where co-ordinate jurisdiction is given to the Court and a Judge, as in sec. 102 of the C.L.P. Act, and the party applies to a Judge, an appeal lies to the Court if the matter is one of practice or procedure. MACINTOSH *v.* DUN, 5 S.R. 99; 22 W.N. 19. [*New South Wales.*]

—— **Notice of.**—Where an appeal is listed and no notice served the respondent is entitled to his costs on appearing to have the appeal struck out. MAHOMED SAID *v.* LATIFF, 7 W.A.L.R. 189. [*Western Australia.*]

—— **Question of fact.**—*Per* Edwards, J.: To justify the Court of Appeal in disregarding the findings of fact of the Judge in the Court below, the appellant must show that these findings are clearly wrong. WHATMAN *v.* UDY, 24 N.Z.L.R. 257. [*New Zealand.*]

In an appeal from the decision of a Judge of first instance on a question of fact, where the question turns on the credibility of witnesses, who have been subjected to cross-examination, and the Judge, having had the opportunity of seeing and hearing the witnesses, has deliberately come to the conclusion as to which side has given the correct version, the Court of Appeal will not disturb his finding unless it is clearly satisfied that the finding was wrong. WILSON *v.* CARMICHAEL, 2 C.L.R. 190; 11 A.L.R. (C.N.) 38. [*New South Wales.*]

And *see* FEDERAL LAW. LUKE *v.* WAITE, 2 C.L.R. 252; 11 A.L.R. 107. [*Victoria.*]

—— **Special leave.**—Leave to appeal from a decision of the Supreme Court to the Court of Appeal granted by the Supreme Court under Rule 18 of the Court of Appeal Rules, on the ground that the point involved was novel and important, and had a far-reaching effect on property in New Zealand. HAMILTON *v.* THE BANK OF NEW ZEALAND, 7 N.Z. Gaz. L.R. 276. [*New Zealand.*]

—— **To High Court.**—*See* FEDERAL LAW.

—— **To Privy Council.**—*See* PRIVY COUNCIL APPEAL.

—— **From justices.**—*See* JUSTICES.

MASTER AND REGISTRAR — Master — Accounts—Statute of Frauds.—In taking accounts in the Master's office any party who intends to rely upon the Statute of Frauds as a defence to the claim must give notice in writing by letter or affidavit or by mention in the falsifications of the ground of defence, in order that the other party may have an opportunity of being prepared with evidence in reply. MOORE *v.* LEAN, 22 W.N. 105. [*New South Wales.*]

—— **Foreclosure action—Fees payable on taking accounts.**—*See* SCOTTISH AND AUSTRALIAN INVESTMENT CO., *v.* MACFARLANE, 1905 Q.W.N. 23. [*Queensland.*]

—— **Registrar.**—Sec. 5 of the Supreme Court Practice and Procedure Acts Amendment Act, 1893, provided that the Registrars for certain districts and places should continue to exercise their functions within the districts appointed for them under the Supreme Court Practice and Procedure Amend-

ment Act, 1881, and the other enactments repealed by the Act of 1893, as if they had been appointed to exercise such functions by proclamation under the Act of 1893. *Held*, that this did not give such a Registrar any power other than those given to Registrars by secs. 3 and 4 of the Act of 1893, even assuming that he had some other or greater power under the Act of 1881 previously to its repeal. *Held*, however, that a Registrar had not any other or greater power under the Act of 1881, than he has under secs. 3 and 4 of the Act of 1893. GARDNER *v.* FRANCIS, 24 N.Z. L.R. 544; 7 Gaz. L.R. 68. [*New Zealand.*]

A Registrar has no jurisdiction to make any order, the power to make which is given to the Court, and which when made is an order of Court, though the power may be exercised by a Judge sitting in Chambers. Orders under the following rules, therefore, cannot be made by a Registrar—Joining parties (r. 90); for issue of a third party notice (r. 95); for discovery of documents (r. 161); for inspection of documents (r. 163); dismissing an action for non-compliance with order for discovery, &c. (r. 165); examination of witnesses (rr. 177, 178); charging order (r. 308)—in any *ex parte* or non-contentious proceedings. The Registrar cannot exercise any power conferred on a Judge personally, as by secs. 76 and 77 of the Trustee Act, 1883, or sec. 12 of the Chattels Transfer Act, 1889. *Re* LUXTON, 24 N.Z.L.R. 687; 7 Gaz. L.R. 468. [*New Zealand.*]

Where a Registrar has jurisdiction to make an order and exercises that jurisdiction, the order must show on its face that it is made by a Registrar in the absence of a Judge. It must be made in the name of the Registrar, and not of the Court. Any order made by the Registrar without jurisdiction is a nullity, and not a mere irregularity. *Gardner* v. *Francis* (7 Gaz. L.R. 68; 24 N.Z.L.R. 544), approved. *Re* LUXTON, 24 N.Z.L.R. 687; 7 Gaz. L.R. 468. [*New Zealand.*]

A Registrar has no jurisdiction in the absence of a Judge of the Supreme Court to appoint new trustees under sec. 13 of the Settled Land Act, 1886. *Re* LUXTON, 24 N.Z.L.R. 687; 7 Gaz. L.R. 468. [*New Zealand.*]

AFFIDAVIT—Jurat.—The jurat of an affidavit in support of a prohibition was defective, in that it omitted to state the place where the affidavit was sworn. The Court allowed an amendment. *Ex parte* ESLICK, 5 S.R. 470; 22 W.N. 148. [*New South Wales.*]

RULES AND ORDERS—Confirmation of rule nisi.—*See* PROHIBITION. *Ex parte* BROWN, 4 S.R. 714; 21 W.N. 231. [*New South Wales.*]

—— **Rule nisi for prohibition.—Return**—*See* PROHIBITION. *Ex parte* BETTS, 22 W.N. 77. [*New South Wales.*]

—— **Two similar applications—Res judicata—Application for discovery before and after declaration.**—An application for discovery was made in a libel action before declaration, and refused on the ground of insufficient material. After issue joined another application was made for discovery for the purposes of evidence, and dismissed on the ground that one application having been refused, a second application cannot be entertained. *Held*, that the two applications were not the same, and that the principle of *Thompson* v. *Southern Coal Co.* (15 N.S.W. L.R. 166; 10 W.N. 214), did not therefore apply. MACINTOSH *v.* DUN, 5 S.R. 99; 22 W.N. 19. [*New South Wales.*]

PREMATERNITY SUMMONS.

[*See* DESERTED WIVES AND CHILDREN.

PRESCRIPTION.

Right of way. *See* EASEMENT.

River.—*See* WATER. WHATMAN *v.* UDY, 24 N.Z.L.R. 257. [*New Zealand.*]

Nuisance.—*See* NUISANCE. AUCKRAN *v.* PAKURANGA HUNT CLUB, 24 N.Z.L.R. 235. [*New Zealand.*]

PRESUMPTION.

See EVIDENCE.

PRETENCED TITLES.

Pretenced Titles Act, 32 Hen. VIII. c. 9, sec. 2—Official Assignee—Conveyance by—7 Vic. No. 19, sec. 15—8 Vic. No. 15, sec. 2—10 Vic. No. 14, sec. 3—Bankruptcy Act, 1898—(No. 25), secs. 67, 68.—The Pretenced Titles Act, 32 Henry VIII. c. 9, sec. 2, applies to conveyances made by official assignees in their official capacity. The effect of 7 Vic. No. 19, sec. 15, 8 Vic. No. 5, sec. 2, 10 Vic. No. 14, sec. 3 is merely to provide that a purchaser may deal with the Official Assignee as if the latter were the beneficial owner of the bankrupt's property. They do not render valid a conveyance by the Official Assignee which would have been invalid if made by a beneficial owner. WOODS *v.* WILLIAMS, 5 S.R. 212; 22 W.N. 65. [*New South Wales.*]

PRINCIPAL AND AGENT.

Manager of company.—If the managing director of a company is empowered to appoint some one as manager under him, and he appoints some one as manager under him, the fact that in so doing he purports to give the manager greater powers than he is authorized to give him, will not make the appointment as manager invalid. FELL *v.* THE PUPONGA COAL AND GOLD MINING COMPANY OF NEW ZEALAND, LTD., 24 N.Z. L.R. 758. [*New Zealand.*]

Commission on profits—Deduction for Income tax.—Where a person is entitled to a commission on the profits of a business, income-tax is not a proper deduction to be made in ascertaining the profits on which commission is payable. It is not a thing necessary to be paid in order that the profits should be earned. It is a tax on profits made. RATHBONE *v.* THE PUBLIC TRUSTEE, 24 N.Z.L.R. 801. [*New Zealand.*]

Interpretation of contract to lighter load and pass through Customs.—*See* CONTRACT. COMMONWEALTH PORTLAND CEMENT CO. *v.* WEBER, LOHMANN & CO., 5 S.R. 136. [*New South Wales.*]

Contract—Authority of agent—Contract for agent's benefit.—It is not within the scope of an agent's authority to bind his principals by a contract which, although made ostensibly on their behalf, is, to the knowledge of the other party, really made for his own benefit, even though the contract is of a kind which he has a general authority to make; and therefore, where an agent makes a contract, and the party with whom he is dealing is aware of the circumstances, the principals are not bound. *Howard* v. *Braithwaite* (1 V. & B. 202); *British Mutual Banking Co.* v. *Charnwood Forest Railway Co.* (18 Q.B.D. 714); and *Shipway* v. *Broadwood* ([1889] 1 Q.B. 369), considered and applied. LYSAGHT BROTHERS & CO., LTD. *v.* FALK, 2 C.L.R. 421; 4 S.R. 665; 21 W.N. 219; 11 A.L.R. 149. [*New South Wales.*]

—— **Architect—Authority—Accepting order for payment.**—In the absence of express or implied authority, an architect is not the agent for the employer so as to bind the latter by accepting an order on the architect given by the builder in payment for goods supplied. HYNE *v.* PODOSKY, 1905 S.R. (Q.) 147; Q.W.N. 53. [*Queensland.*]

The relation of architect and employer is, after the contract is signed, that of principal and agent. *Ibid.*

—— **Undisclosed principal.**—An agent who ordered goods in his own name and paid for them by cheques drawn on a fund supplied by the principal, there being nothing on the face of the cheques or in the bank books to show that it was a trust account, *held*, personally liable for the price of other goods supplied in the course of the dealings. CHAMBERS *v.* DEAN, 7 N.Z. Gaz. L.R. 404. [*New Zealand.*]

In April, 1902, L. made a written offer to the Government of New South Wales to sell them for £235 a steam locomotive crane, to be delivered within a week after receipt of the order. The crane at the time was owned by M., and L. had no property in, or right to the possession of, it. L. was unable to purchase the crane from M., and on the 13th May, an arrangement was made between him and the plaintiff by which the plaintiff was to buy the crane from M., and to be the principal in the proposed transaction with the Government, while L. was to be the plaintiff's agent. The Government had no notice of the arrangement, and no further offer was made to them either by L. or the plaintiff. On May 19th, the Government sent to L. a requisition for delivery of the crane within two days from date. L. delivered the crane and was paid for it. Before payment to L., the Government had notice that the plaintiff was the owner of the crane, and claimed to be paid for it. *Held*, that at the time of sending the requisition no contract existed between L. and the Government, inasmuch as the requisition was not an acceptance of L.'s previous offer, but a new offer by the Government to buy the crane on altered conditions; that this offer was accepted and the contract made by L., not on his own behalf, but as agent for the plaintiff as undisclosed principal; and that the plaintiff was, therefore, entitled to recover the price of the crane from the Government. Decision of the Full Court of New South Wales (5 S.R. 304; 22 W.N. 86), reversed. MOONEY *v.* WILLIAMS, 5 S.R. (N.S.W.) 304; 22 W.N. 86; 11 A.L.R. 437. [*New South Wales.*]

Tort—Liability of master for arrest by servant.—*See* FALSE IMPRISONMENT. O'BRIEN *v.* COMMISSIONER FOR RAILWAYS, 7 W.A.L.R. 119—RAILWAYS. HAMILTON *v.* RAILWAY COMMISSIONERS, 5 S.R. 267; 22 W.N. (N.S.W.) 69.

—— **Authority of railway servant to waive notice.** — *See* RAILWAYS. WEST AUSTRALIA NEWSPAPER CO. *v.* COMMISSIONER OF RAILWAYS, 7 W.A.L.R. 6. [*Western Australia.*]

Protection of agents and servants of the Crown—Statutes not binding on the Crown.—The defendant contracted with the Government to erect a building, and in so doing he negligently broke a gas pipe and caused a waste of gas, which is made an offence punishable summarily under the Gas Company's Act. The defendant set up that the Crown was not bound by the said Act, and that as he had acted as the servant of the Crown, he was not liable to be convicted. *Held*, that

the defendant was liable even though the Crown was not bound, since there was no employment or agency to do the act complained of. LANGWILL *v.* LEAHY, 4 S.R. 717; 21 W.N. 232. [*New South Wales.*]

Criminal liability of master for act of servant done in the course of employment, but which the servant is forbidden to do, discussed. WALKER *v.* CHAPMAN, 1904 S.R. (Q.) 330; Q.W.N. 83. [*Queensland.*]

PRINCIPAL AND SURETY.

Giving time—Discharge of surety—Overdraft.—Where, at the request of one of several co-sureties on a cash credit bond, but without the knowledge or assent of the rest, the creditor enters into a binding agreement with the principal debtor that an extension of time for payment shall be given him, the surety at whose request the time was given is not thereby discharged. *Quære*, whether a covenant, or a binding agreement by a creditor not to sue the principal debtor for a certain time, operates to discharge a surety, even if made without his consent. Principles underlying the rule as to the discharge of sureties by dealings between the creditor and the principal debtor, considered. *Australian Joint Stock Bank* v. *Bailey* (18 N.S.W.L.R. (L.), 103), distinguished. A binding agreement by a bank to allow an increase of the limit of a creditor's overdraft during a specified period, may, under some circumstances, amount to a giving of time so as to release the guarantors of the overdraft. *Rouse* v. *Bradford Banking Co.* ([1894] A.C. 586), distinguished. DEANE *v.* CITY BANK OF SYDNEY, 2 C.L.R. 198; 11 A.L.R. 1. [*New South Wales.*]

PRIVILEGES ACT.

See PRACTICE. SEDDON *v.* TAYLOR, 7 N.Z. Gaz. L.R. 389. [*New Zealand.*]

PRIVY COUNCIL APPEALS.

Not taken away by Commonwealth statutes.—*In re* THE INCOME TAX ACTS, 1905 V.L.R. 463; 26 A.L.T. 198; 11 A.L.R. 117. [*Victoria.*]

Final judgment.—On the trial of an action the Judge referred certain questions to the Full Court for his guidance in determining the action, and the Full Court answered those questions. *Held*, that the determination of the Full Court was an order, but was not a "final judgment, decree, order, or sentence" within the meaning of the Order in Council of 9th June, 1860, and therefore that no appeal therefrom to the Privy Council could be brought under that Order in Council. Decision of a'Beckett J. affirmed. On an appeal to the Full Court from a refusal to grant leave to appeal to the Privy Council, under the Order in Council, the Full Court may award costs of the appeal. WEBSTER *v.* SHAW, 1905 V.L.R. 200; 26 A.L.T. 153; 11 A.L.R. 81. [*Victoria.*]

Public Works Act—Compensation Court.—The Supreme Court has no jurisdiction to grant leave to appeal to the Privy Council from the decision of the Supreme Court on a case stated for it by the President of the Compensation Court, under sec. 67 of the Public Works Act, 1894. *Russell* v. *Minister for Lands* (17 N.Z.L.R. (S.C.) 241) followed. KINGDON *v.* HUTT RIVER BOARD, 7 N.Z. Gaz. L.R. 642. [*New Zealand.*]

Mining—Decision of Court of Appeal.—*See* MINING. EWING *v.* SCANDINAVIAN WATER-RACE CO., 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

Dismissal of appeal.—When the Privy Council dismisses an appeal from the Court of Appeal of New Zealand simpliciter, it is unnecessary to make such order an order of the colonial Court. It is the duty of the Registrar to act upon the order affirming the judgment appealed against. HENDERSON & CO., LTD. *v.* DANIELL, 7 N.Z. Gaz. L.R. 12. [*New Zealand.*]

Reduction of costs—Effect of leave to appeal.—*See* COSTS. R. *v.* JOYCE, 7 N.Z. Gaz. L.R. 661. [*New Zealand.*]

PROBATE AND ADMINISTRATION.

Probate—To whom granted—Substituting appointment.—A testator by his will appointed two persons as trustees and executors. There was a further clause providing that should any vacancy occur from certain specified causes during the testator's lifetime or otherwise, the Queensland Trustees Limited were to be appointed trustees and executors. One of the trustees having predeceased the testator, *held*, that probate should be granted to the survivor alone, and not to him with the Queensland Trustees Limited. The clause intended the company to be trustees only in the event of the death of both the first appointed trustees. *In re* WALMSLEY, 1905 Q.W.N. 1. [*Queensland.*]

—— **Lost will.**—Probate of lost will granted

to the executrix thereof, according to the affidavit of contents made by the solicitor who prepared the will. *In the will of* WARNES, 7 N.Z. Gaz. L.R. 631. [*New Zealand.*]

—— **Duplicate will.**—Where a will has been executed in duplicate, it is only necessary to obtain probate of one of the duplicates. Where both parts had been filed in the Registry, they were ordered to remain there. *In re* HANDFORD, 1905 Q.W.N. 71. [*Queensland.*]

—— **Of what instruments granted.**—*See* WILL.

—— **Foreign probate—Re-sealing—Application by one executor only.**—By his will a testator appointed A. executor as to part of his property, none of which was situate in Queensland, and B. as to the residue, part of which was situate in Queensland. The Supreme Court of Victoria granted probate to each executor as to the part of the property in respect of which the appointment was made. With the consent of A., a re-seal of the whole probate was granted on the application of B. *In re* BENN, 1905 Q.W.N. 30. [*Queensland.*]

—— **Certificate.**—The certificate of correctness of a probate granted by the Supreme Court of Victoria, though it did not show that the officer making the certificate had the authority of the Court granting the probate attested by the seal of that Court, or that the certificate was given for the purposes of the British Probate Act, 1898, was *held* sufficient. *In re* WHITTINGHAM, 1905 Q.W.N. 17. [*Queensland.*]

—— **Payment of legacy** to executors of foreign will without probate or re-sealing. *See* EXECUTOR AND ADMINISTRATOR. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

—— **Proof in solemn form.**—The right of executors to have proof in solemn form exists in Victoria, and is an absolute one. The next of kin have a right to apply for proof in solemn form, but the Court has a discretion to grant or refuse the application. *In the will of* HARRISON, 11 A.L.R. (C.N.) 25. [*Victoria.*]

—— **Affidavit of executor—Affirmation.**—Probate refused where the executor made an affirmation in lieu of an oath, the affirmation not being in the form required by the Oaths Act, 1890. *In the will of* LILLEY, 7 N.Z. Gaz. L.R. 380. [*New Zealand.*]

—— **Affidavit by attesting witness.**—The fact that the surviving attesting witness of a will refuses to make an affidavit of the due execution of the will except upon payment of an exorbitant sum of money, is not a sufficient reason for dispensing with such affidavit. *In the will of* ROSS, 22 W.N. 184. [*New South Wales.*]

—— **Attesting witnesses.**—To obtain a grant of probate an affidavit from an attesting witness must be produced (r. 9) or it must be shown either that both the attesting witnesses are dead or that from other circumstances no affidavit can be obtained from either of them. *In the will of John Walsh, deceased* (9 W.N. 123), not followed. *In the will of* MOORE, 5 S.R. 380; 22 W.N. 112. [*New South Wales.*]

—— **Caveat—Who may lodge.**—A beneficiary under a will can lodge a caveat to the granting of probate to the will, although if the will is upset, he has no beneficial interest in the estate of the testator. The meaning of sec. 18 of the Administration and Probate Act, 1890, considered. *In the will of* ADCOCK, 26 A.L.T. 127. [*Victoria.*]

—— **After grant of probate.**—A caveat having been lodged after grant, but before issue, of probate, and an order *nisi* for the removal of the caveat having on the return day being merely directed to be placed in the list for hearing, the procedure on the hearing will be the same as if the caveat had been lodged before the grant of probate. *In re Hall* (22 A.L.T. 120; 26 V.L.R. 555), distinguished. *In the will of* MCCONVEILL, 2 A.L.T. 84; 11 A.L.R. 303. [*Victoria.*]

Administration—Person presumed dead.—W. left his home in New Zealand, taking one son with him, but deserting his wife and other children. He was known to have been alive and in San Francisco during the first seven years of his absence, the son whom he took with him having been there during that time, but having then returned to New Zealand. W. was then a mate on a schooner trading between San Francisco and South American ports. W. never communicated with any of his family in New Zealand either during the first seven years of his absence or for a further period of seven years after his son returned to New Zealand, nor was anything heard of him in New Zealand during the latter period. Letters written to friends of W. in San Francisco were not replied to, and letters written to W. himself were returned by the postal authorities. *Held*, that, looking to the special circumstances, and to the fact that W. might have made a will during the first seven years of his absence, administration of his estate ought not to be granted upon the above evidence. Advertisements required to be published in San Francisco, stating that inquiries were being made, and that administration of W.'s estate would be granted if no communication regarding him was received. *In re* WALLER, 24 N.Z.L.R. 623. [*New Zealand.*]

—— **Ancillary grant for the purpose of**

appointing new trustee.—The testator, being the sole surviving trustee of certain property in Queensland, died in New South Wales, having by his will appointed executors, neither of whom resided in Queensland. Probate was granted to the executors by the Supreme Court of New South Wales. The executors appointed the present applicant their attorney to apply for an ancillary grant of letters of administration, in order that he might appoint a new trustee to whom the estate could be transferred. Order as asked on condition that the applicant should appoint a new trustee and transfer the property to such trustee. *In re* KING, 1905 Q.W.N. 43. [*Queensland.*]

—— **Attorney.**—A person, who, under a power of attorney from a foreign administrator with the will annexed, has applied for and obtained an order affixing the seal of the Victorian Court to a copy of the foreign letters of administration holds the position of an original administrator so far as the assets in Victoria are concerned, and is personally bound to see their administration. *In the will of* HOLLINGWORTH; PERMEZEL *v.* HOLLINGWORTH, 1905 V.L.R. 321; 26 A.L.T. 213; 11 A.L.R. 217. [*Victoria.*]

—— **Grant to substitute of attorney.**—The intestate's next of kin having appointed an attorney, with power to substitute another attorney, administration was granted to the substitute. *In re* AH LIN, 1905 Q.W.N. 59. [*Queensland.*]

—— **Death of principal—Lapse.**—Where letters of administration have been granted to an attorney for one of the next of kin, who dies before administration completed, the administration lapses. *In re* MAHER, 1905 Q.W.N. 58. [*Queensland.*]

—— **Administration de bonis non—Next of kin out of jurisdiction—Service—Practice.**—The personal representatives in England of the estate of a deceased person appointed an attorney in N.S.W. to apply for administration *de bonis non* of the intestate estate in N.S.W. of the wife of the deceased. All the next of kin resided out of N.S.W. One resided in India and the other in England. The Court refused to grant administration to such attorney until the next of kin had been served with notice of the application. *Re* BEDFORD, S.R. 5 47; 21 W.N. 201. [*New South Wales.*]

—— **Application for—Statement as to relatives and next of kin.**—*In the estate of* JAMIESON, 11 A.L.R. (C.N.) 50. [*Victoria.*]

—— **Application for—Notice to next of kin.**—Where one of several next of kin of equal degree applies for administration, notice ought to be given by the applicant to the others, or their consent in writing obtained to the grant. *In the estate of* PARKER, 7 N.Z. Gaz. L.R. 631. [*New Zealand.*]

—— **Construction of will on application for administration.**—*See* WILL. *In the will of* MALIN, 1905 V.L.R. 270; 26 A.L.T. 200; 11 A.L.R. 129. [*Victoria.*]

—— **Revocation.**—When letters of administration have been once granted by the Supreme Court of New Zealand, the only manner in which they can be recalled is to issue a writ under r. 516 of the Civil Code, which supersedes the English method of revocation on motion in support of the affidavit. *In re* CHADWICK, 24 N.Z.L.R. 438; 7 Gaz. L.R. 255. [*New Zealand.*]

—— **Administration bond—Rights of sureties.**—Sureties to an administration bond have the same rights as ordinary sureties or a principal debtor, and accordingly they are entitled on the occurrence of default or breach of duty on the part of the administrator to obtain from the Court, in proceedings against both the administrator and the beneficiaries, such orders and directions (including, if necessary, relief similar to that which would be granted in an administration action) as will remedy the continuance of the default or breach; and this is so even though no present injury or loss for which the sureties could be made liable is proved to have resulted. HOLDEN *v.* BLACK, 2 C.L.R. 768; 1905 V.L.R. 326; 26 A.L.T. 205; 11 A.L.R. 200, 393. [*Victoria.*]

—— **Reduction.**—In cases where the real estate of an intestate is not to be sold at once, the bond to be entered into by the administrator may be reduced so as to cover the amount of the personal estate. In all applications for leave to sell, mortgage, or lease real estate, an affidavit must be filed showing what bond was given by the applicant and whether such bond is in full force or not. *In the estate of* ROCK, 22 W.N. 216. [*New South Wales.*]

—— **Dispensation—Sureties.**—In applications for sealing letters of administration under Part III. of the Administration and Probate Act, 1890, the Court, though it may reduce the penalty of the bond and dispense with sureties, cannot dispense with the bond itself, though the applicant is a consul. *Re Chevalier* (25 A.L.T. 78; 29 V.L.R. 326), followed. *In the estate of* WALLIS, 1905 V.L.R. 671; 27 A.L.T. 38; 11 A.L.R. 315. [*Victoria.*]

Costs—Probate jurisdiction—Special work.—*See* ATTORNEY AND SOLICITOR. *Ex parte* AIKEN; *In re* LUCAS, 1905 V.L.R. 361; 27 A.L.T. 10; 11 A.L.R. 198. [*Victoria.*]

Maintenance orders.—*See* INFANTS. *Estate*

of PUMPA, 5 S.R. 379; 22 W.N. 157. [*New South Wales.*]

Probate duty.—*See* STAMP DUTY.

PRODUCTION ORDER.

See EVIDENCE.

PROHIBITION.

Jurisdiction—Apparent defect—Discretion.—By sec. 74 of the Small Debts Ordinance 1863 (this statute has since been repealed by the Local Courts Act, 1904), providing for the framing of Local Court Rules, it is enacted that in cases where none of the rules framed shall apply, the rules and practice of the County Courts in England shall be in force. No rules have been framed dealing with the granting of leave to issue judgment summonses in local Courts for service on defendants not residing or carrying on business in the districts of such local Courts. The magistrate of the local Court at Mt. Magnet gave leave for the issue of a judgment summons against the defendant, who resided in Perth, outside the Mt. Magnet local Court district. No affidavit was sworn in support of the application for leave, as required by Order XXV., r. 26, of the English County Court Rules, 1903. *Held*, that where leave is required for the issue of a judgment summons, the magistrate has no jurisdiction to grant such leave except on an affidavit as prescribed, in the absence of a local rule on the subject, by the English County Court Rules and Practice; that the absence of such an affidavit is a defect apparent on the face of the proceedings, and the Court has no discretion on an application for a writ of prohibition, and is bound to order the writ to issue. KARIM *v.* RHAIL, 7 W.A.L.R. 127; WILSON *v.* GRAY, 7 W.A.L.R. 95. [*Western Australia.*]

—— **Defect not apparent—Delay.**—*See* SMALL DEBTS RECOVERY. HILL *v.* BETRIX, 7 W.A.L.R. 116. [*Western Australia.*]

Time to apply—Final adjudication—Application to vary order.—An application to restrain proceedings on a maintenance order under the Deserted Wives and Children Act was made more than 20 days after the making of the original order, but within 20 days after an unsuccessful application under sec. 21 to vary the original order. *Held*, that the refusal to vary the order was not the final adjudication within the meaning of sec. 112 of the Justices Act, and that the application for a prohibition was out of time. *Ex parte* BROWN, 4 S.R. 714; 21 W.N. 231. [*New South Wales.*]

—— **Waiver of irregularity.**—The defendant appeared at the hearing of an information under sec. 9 of the Infant Protection Act, 1904, and consented to an adjournment. He subsequently appeared and pleaded to the information and then took objection to the jurisdiction of the magistrate on the ground that the complaint was irregularly issued under sec. 8 of the Act by reason of the absence of corroborative evidence. *Held*, that the defendant had waived his right to complain of the irregularity. *Ex parte* JACKSON, 22 W.N. 30. [*New South Wales.*]

Infant Protection Court.—*See* DESERTED WIVES AND CHILDREN. *Ex parte* STARK, 5 S.R. 458; 22 W.N. 133. [*New South Wales.*]

Native Appellate Court—Natural justice.—*See* NATIVE LANDS. HAKCPA TE AHUNGA *v.* SETH SMITH, 7 N.Z. Gaz. L.R. 665. [*New Zealand.*]

Native Land Court—Jurisdiction—Principle of abatement.—*See* NATIVE LANDS. ATTORNEY-GENERAL *v.* SETH SMITH, 7 N.Z. Gaz. L.R. 662. [*New Zealand.*]

Summons—Validity of service—Jurisdiction.—Although the magistrate acting on an affidavit of personal service which subsequently was proved to be false, convicted, the Full Court refused to grant a prohibition, inasmuch as there had been in fact a good service in accordance with the Justices Act at the last place of abode. *Ex parte* WEEKES, 5 S.R. 465; 22 W.N. 146. [*New South Wales.*]

Appeal or prohibition.—*See* MINING—MODERANA *v.* BACKHOUSE, 7 W.A.L.R. 39; SMALL DEBTS RECOVERY—HILL *v.* BETRIX, 7 W.A.L.R. 116. [*Western Australia.*]

Form of rule nisi—Amendment—Practice.—The rule *nisi* for a writ of prohibition called upon the respondents to show cause "why a prohibition should not issue," the words "writ of" being omitted. The Full Court intimated that they would give leave to amend, if necessary. *Ex parte* WARK, 22 W.N. 10. [*New South Wales.*]

—— **Statutory prohibition.**—A rule *nisi* for a prohibition granted by a Judge under sec. 114 of the Justices Act, 1902, may be made returnable before the Judge in Chambers. The rule need not be made returnable before the Judge who grants it. *Ex parte* BETTS, 22 W.N. 77. [*New South Wales.*]

—— **Commissioners of Taxation—Prohibition against—Form of rule.**—A rule *nisi* for a prohibition against the commissioners of

taxation was discharged on the ground that the rule should have been directed against the commissioners individually. *Ex parte* DANSEY, 22 W.N. 51. [*New South Wales.*]

Grounds—Statutory common law.—*Semble*, a statutory prohibition cannot be granted on a ground which would support a prohibition at common law. *Ex parte* BROWN, 4 S.R. 714; 21 W.N. 231. [*New South Wales.*]

Confirmation.—A rule *nisi* for a prohibition to restrain further proceedings upon a maintenance order under the Deserted Wives and Children Act was granted out of term by a Judge in Chambers on the grounds (1) that the magistrate had no jurisdiction; and (2) that there was no evidence of desertion. *Held*, as to the first ground, being a ground upon which a prohibition at common law might be granted, that the rule had lapsed for want of confirmation. *Ex parte* BROWN, 4 S.R. 714; 21 W.N. 231. [*New South Wales.*]

Magistrate's reasons—Affidavit in support of prohibition.—The Full Court allowed a paragraph in the affidavit in support of the prohibition setting out statements made by the magistrate when giving his decision to be read on an application to make absolute the rule *nisi*. *Ex parte* WARK, 22 W.N. 10. [*New South Wales.*]

And *see* JUSTICES.

PROPERTY LAW CONSOLIDATION.

See MORTGAGE. HAMILTON *v.* BANK OF NEW ZEALAND, 24 N.Z.L.R. 109; 7 Gaz. L.R. 277. [*New Zealand.*]

PROVIDENT ASSOCIATION.

Bank of New Zealand—Pensions.—The rules of the Bank of New Zealand Officers' Guarantee and Provident Association provided that no member to whom a pension was granted should have any vested legal or equitable right therein or thereto enforceable by or recoverable in any Court of law or equity; and, further, that if upon actuarial investigation it should appear that the then existing scale of pensions was either beyond or less than the capacity of the fund, the full members of the association should be called upon to decide whether the rate of contribution should be varied, or the pension scale altered, in order to bring about an equilibrium. The term "full members" comprised those members who were still in the service of the bank and contributing to the Provident Fund, and did not include members who had retired and were in receipt of pensions. *Held*, by Stout C.J. and Cooper J., that the Full members, when acting under the last-mentioned provision of the rule, had power, in altering the pension scale, to reduce existing pensions. The rules, although they provided that no member should have a vested legal or equitable right to a pension enforceable in any Court, also gave a right of appeal to the board of directors of the bank from any decision of the board of management of the provident fund respecting any claim made by a member, and a further appeal to a Judge of the Supreme Court from the decision of the board of directors of the bank. *Held*, by Cooper J., that on an appeal by a member under this provision against the reduction of his pension, the question for the Supreme Court was whether any substantial injustice had been done to the member by its reduction. And, *per* Stout C.J., if a new rule affecting pensions already granted had been unreasonable, the Court might possibly, on appeal to it, have had power to set the rule aside and to declare it not binding on those sought to be brought under it. BLACKBURNE *v.* THE BANK OF NEW ZEALAND OFFICERS' GUARANTEE AND PROVIDENT ASSOCIATION, 24 N.Z.L.R. 476. [*New Zealand.*]

PUBLIC HEALTH.

Purchase of liquor by inspector—Finding by magistrate that inspector acted under Liquor Act.—An inspector of police when purchasing a sample of liquor in a hotel stated that he was the district licensing inspector. The sample was dealt with and proceedings taken under the Public Health Act. *Held*, that there was a sale of the liquor under the Public Health Act. HUGHES *v.* WILSON, 22 W.N. 32. [*New South Wales.*]

Bread.—*See* BREAD.

Obstructing inspector—Sale of milk and water.—It is no offence under the Health Act of 1900, to sell milk and water as milk and water and not as milk. G., carried about in a cart one vessel containing milk, and another containing water. He mixed the contents of the two vessels in a can and carried the can containing the mixture into a restaurant, where an inspector met him and demanded a sample from the can. This he refused, and threw out the contents. There being no evidence that he had refused a sample from the cart, *held*, that he had not obstructed the inspector in the performance of anything which the inspector was empowered to do as such inspector under sec. 172 (1) of the Health Act, 1900. FRASER *v.* GRAHAM; *Ex parte* GRAHAM, 1905 S.R. (Q.) 137; Q.W.N. 56. [*Queensland.*]

Sale of milk—Certificate of analyst—Evidence.—A certificate of an analyst under sec. 82 of the Public Health Act, 1902, stating that milk is adulterated by the addition of water is evidence of adulteration. *Ex parte* RIGBY, 5 S.R. 317; 22 W.N. 60. [*New South Wales.*]

A certificate of an analyst under sec. 82 of the Public Health Act is admissible under sec. 15 of the Evidence Act without proof that it is in the form prescribed by the Public Health Act. *Ex parte* RIGBY, 5 S.R. 317; 22 W.N. 60. [*New South Wales.*]

Milk—Notice to purchaser.—The defendant, a seller of milk, had on his delivery cart the words "containing preservatives," the purchaser who did not see those words on the cart, and did not know that they were on the cart until after the completion of the sale, bought some of the milk and paid for it, and when he was separating it into bottles for the purpose of analysis, the seller called his attention to the words on the cart. The milk was found on analysis to be mixed with boric acid. *Held*, that the sale was to the prejudice of the purchaser and that the mere fact that the notice was on the cart did not protect the seller, where the purchaser did not see the notice, and did not know it was there until the sale was completed. *Pearks, Gunston & Tee, Ltd.* v. *Houghton* ([1902] 1 K.B. 889), commented on. RIDER *v.* BACCHUS MARSH CONCENTRATED MILK CO., 1905 V.L.R. 147; 26 A.L.T. 156; 11 A.L.R. 37. [*Victoria.*]

Nightsoil removal.—*See* CONTRACT—MUNICIPALITIES.

Notice to vaccinate child—Service.—In the absence of evidence of authority a wife is not the agent of her husband to receive a notice under sec. 204 of Act No. 1098, requiring him to have a child vaccinated. THOMPSON *v.* KING, 1905 V.L.R. 375; 11 A.L.R. (C.N.) 61. [*Victoria.*]

Slaughtering.—*See* SLAUGHTERING.

Offensive trade—Boiling down refuse.—A defendant, a butcher, may be rightly convicted under sec. 223 (1) of Act No. 1098 of carrying on a trade or occupation usually carried on, in, or connected with works for boiling down meat, bones, blood and offal on evidence showing that, in order to get rid of the refuse from his shop, he boiled it down three times a week in summer, and once a month or oftener in winter. POPE *v.* FRANKLIN, 26 A.L.T. 170; 11 A.L.R. 68. [*Victoria.*]

PUBLIC PARKS.

See PUBLIC RESERVES.

PUBLIC RESERVES.

Powers of trustees.—Trustees of Crown land for public purposes are at liberty to use, or allow the use of, the land for any purpose incidental or collateral to the expressed purposes of the grant, including profit to the trustees, provided that such use is not inconsistent, and does not interfere, with the trust purposes. By Crown grant, land in Brisbane was vested in trustees upon trust "as a reserve for cricket and other athletic sports, and for no other purposes whatsoever." The trustees let the reserve for three years, at a rental, to S., with liberty to him to use a cricket ground, formed in the reserve, with all its buildings and improvements, for bicycle racing and such other lawful sports, pastimes and purposes as he might desire, on stated evenings and afternoons, subject to certain conditions as to notice to the trustees, and as to the reserve not being engaged or required by the trustees. Liberty was also given to S. to use the portion of the reserve theretofore used for pony and horse racing, for matches, sports or other pastimes, subject also to stated conditions as to time of user, and to the ground not being required by the trustees. It appeared that a racing track encircled the cricket field, which was also encircled by a bicycle track, and that cricket and bicycle sports could not be held whilst horse racing or training was proceeding. It appeared, also, that the reserve had been lawfully mortgaged by the trustees, and that the rental received from S. was essential to the payment of the interest thereon and to the general upkeep of the reserve. *Held*, that, notwithstanding the words "and for no other purposes whatsoever," the trustees were entitled to permit the use of the reserve for any lawful purpose not inconsistent with its use, when reasonably required, as a place for holding athletic sports, and in particular for any purpose which, whilst not interfering with such use, would be conducive to the main object of the trust, as for example, for raising funds by way of rent, to be applied to the carrying out of the main object. But, *held*, upon the facts that the trustees had exceeded their powers upon the terms of the agreement with S., and declaration made in accordance with the above principle. Judgment of the Full Court of Queensland varied. DOWN *v.* ATTORNEY-GENERAL OF QUEENSLAND; ATTORNEY-GENERAL *v.* DOWN, 2 C.L.R. 639; 1905 S.R. (Q.) 16; Q.W.N. 9; 11 A.L.R. 288. [*Queensland.*]

Race-course—Regulations—User of reserve.—Under sec. 7 of the Public Reserves Act, 1881, Amendment Act, 1885, trustees of a race-course may make regulations not only prescribing the conditions on which the public may be admitted to the race-course, but also prescribing the conditions upon which they shall be permitted when admitted to use the race-course. A regulation made

under the section prohibiting bookmaking on the course is reasonable and valid. FAIRBAIRN *v.* STEAD, 7 N.Z. Gaz. L.R. 330. [*New Zealand.*]

PUBLIC SCHOOL TEACHER.

See EDUCATION.

PUBLIC SERVICE.

Permanent officer.—A person who was before the Public Service Act, 1895, engaged by a subordinate officer without the authority of the Governor, although he filled important positions, received a high salary and remained in the service for more than two years (12 years), but was not graded as a permanent officer by the Public Service Board, is not a permanent officer within the meaning of the Public Service Act, 1895. BALE *v.* MILLER, 4 S.R. 652; 21 W.N. 250. [*New South Wales.*]

District Court bailiff—Waiver of right to fees.—The plaintiff was appointed before 1896, a District Court bailiff, under 22 Vic. No. 18. For six years he accepted without protest an increased salary and diminished fees as fixed by the Public Service Board. In 1902 he retired voluntarily on a pension. The plaintiff then brought this action against the Crown claiming the full amount of the fees he was entitled to under the District Courts Act. He sought to retain the increased salary. *Held*, that he had waived his statutory rights by acquiescing in the acts of the Public Service Board, and that a verdict should be entered for the defendant. WITHERS *v.* WILLIAMS, 22 W.N. 204. [*New South Wales.*]

Person whose services are dispensed with.—A public servant who has elected to retire under sec. 15 (5) of the Public Service Act, on the reduction of his salary, is not an officer whose services have been dispensed with within the meaning of 1899 No. 55, sec. 2. DETTMAN *v.* WILLIAMS, 5 S.R. 265; 22 W.N. 81. [*New South Wales.*]

Superannuation allowance — Pension — Broken service.—Sec. 55 of the Civil Service Act, 1884, has no application to persons who on the 1st January, 1885, were only in temporary employ in the service of the Crown. Sec. 48 of the Civil Service Act, 1884, is entirely prospective; the only provision for reckoning and making service prior to the 1st January, 1885, available for the purpose of calculating a superannuation allowance that contained in sec. 55. The only officers of the civil service entitled under sec. 55 of the Civil Service Act, 1884, to a superannuation allowance in respect of service prior to the 1st January, 1885, are the officers entitled to retire and liable to be retired from the civil service under secs. 43, 44, 45, and 46. The plaintiff was a civil servant in permanent employment from the 1st April, 1861, to the 2nd September, 1879, when he was dismissed for misconduct. On the 4th March, 1884, he was temporarily re-employed, until the 1st May, 1885, when he became a permanent officer and continued so to be until 1901, when he was compulsorily retired under the Public Service Act, 1895. He claimed that in the computation of his superannuation allowance his services prior to 1879 should be included. *Held*, on appeal, reversing the decision of A. H. Simpson C.J. in Eq., that the plaintiff was not entitled to any superannuation allowance in respect to his services prior to 1879. HALES *v.* MILLER, 5 S.R. 163; 22 W.N. 46. [*New South Wales.*]

Abolition of office—Pension.—An office cannot be said to be abolished within the meaning of sec. 46 of the Civil Service Act, unless the duties pertaining to that office are also abolished. GREVILLE *v.* WILLIAMS, 22 W.N. 209. [*New South Wales.*]

PUBLIC WORKS.

Removing timber—Appeal from justices.—Sec. 18 of the Public Works Act Amendment Act, 1900, empowers a magistrate, on the application of any person owning timber upon any land from which there is no practicable means of removing it to any railway, road, mine, or sawmill, except by crossing private lands, to make an order authorising the applicant to construct a road or tramway over such lands for the removal of the timber. *Held*, that the section applies where, though it is practicable to remove the timber to the road, the road does not afford a practicable means of removing it to a railway to which it is desired to remove it. The above-mentioned section provides that upon an application to a magistrate, under the section, the provisions of the Justices of the Peace Act, 1882, shall, *mutatis mutandis*, apply. *Held*, that an appeal on points of law lies from the decision of a magistrate upon such an application, under Title I. of Part III. (secs. 236 to 247) of the Justices of the Peace Act, 1882, but that a general appeal upon the facts as well as the law does not lie, the provisions of Title II. of Part III. (secs. 248 to 254) of the last-named Act being inapplicable to the matters dealt with in sec. 18 of the Public Works Acts Amendment Act, 1900. MCGREGOR *v.* WILLIAMS, 24 N.Z.L.R. 795; 7 Gaz. L.R. 363. [*New Zealand.*]

Roads—Care of—County council—By-law.

—*See* LOCAL GOVERNMENT. COLLINS *v.* WOLTERS, 24 N.Z.L.R. 499; 7 Gaz. L.R. 63. [*New Zealand.*]

—— **Dedication.**—*See* ROAD. YORK BAY LAND CO. *v.* BARR, 7 N.Z. Gaz. L.R. 590. [*New Zealand.*]

Resumption—Trustees.—Trustees without power of sale, but with power to execute conveyances and give receipts for lands compulsorily resumed for public purposes, are persons "absolutely entitled" within the meaning of sec. 47 sub-sec. 3 (*d*) of the Public Works Act, 1900. *Re* HARRIS, 22 W.N. 187. [*New South Wales.*]

—— **Lunatic.**—*See Re* MCMILLAN, *infra.*

—— **Tenant in common—Claim for improvements.**—Tenant in common claiming lien for improvements, *held* to be in the position of a defendant on petition for payment out under Public Works Acts, 1900 (N.S.W.), sec. 48. BRICKWOOD *v.* YOUNG, 2 C.L.R. 387; 11 A.L.R. 154; *In re* YOUNG, 4 S.R. (N.S.W.) 743; 21 W.N. 257. [*New South Wales.*]

—— **Assessors—Bias.**—Looking to the fact that the assessors who are members of a compensation Court are appointed by the respective parties, bias, in the sense of strong predisposition in favour of one litigant as opposed to the other, must have been contemplated as probable, if not inevitable; and real bias, caused by anything short of pecuniary interest in the result of the proceedings, cannot therefore be treated as in itself necessarily misconduct disqualifying an assessor or justifying the interference of the Supreme Court to set aside an award. But the rules of law governing the conduct of judicial persons are still to some extent applicable to assessors so appointed; and such an assessor cannot take any direct or indirect pecuniary interest in the award to be pronounced (as where his firm is managing the case for the party by whom he has been appointed,and is to be paid a commission on the amount of the award for its services) without infringing those rules and vitiating the award, unless the objection be known to the party entitled to object, and waived by him. So long as there appears a possibility of knowledge of his pecuniary interest on the part of a member of a Court, it is against the policy of the law to allow the actual existence of such knowledge to be questioned. Where, however, the Court had been unable itself to make an award, no agreement as to amount having been arrived at between the president and either of the assessors, and the Court had simply announced to the parties the amounts separately assessed by the president and the two assessors respectively, and the parties then agreed upon an amount, with a view to avoiding further litigation and expense, and asked the president of the Court to deal with the question of costs and to embody the agreement of the parties as to the amount of compensation and his order as to the costs in the form of an award. *Held*, that the above principles were not applicable, and that an award arrived at in such a manner could only be impeached upon considerations which would result in a Court of equity avoiding any other agreement. *In re* SKENE'S AWARD, 24 N.Z.L.R. 591; 7 Gaz. L.R. 153. [*New Zealand.*]

—— **River bed—Compensation for.**—*See* RIVER BOARDS ACT. KINGDON *v.* HUTT RIVER BOARD, 7 N.Z. Gaz. L.R. 634. [*New Zealand.*]

—— **Road—Closing—Compensation.**—*See* MUNICIPALITIES. SYMONS *v.* MAYOR, &C., OF FOXTON, 7 N.Z. Gaz. L.R. 477. [*New Zealand.*]

—— **Subdivision into allotments.**—Land may be "subdivided into allotments for the purpose of sale" within the meaning of sec. 3 of the Public Works Act, 1905, without a new road or street being laid off. *Palmer* v. *District Lands Registrar* (5 N.Z. Gaz. L.R. 481; 23 N.Z.L.R. 1013) and *Riddiford* v. *Mayor, &c., of Lower Hutt* (6 N.Z. Gaz. L.R. 424; 24 N.Z.L.R. 54), ought not to now be followed so far as they decide that there can be no subdivision into allotments for the purpose of sale, without a new road or street being laid off. (*Per cur.* Edwards J. diss.). There must nevertheless be a subdivision into allotments for the purpose of sale in the sense in which that term is ordinarily used before sec. 3 of the Public Works Act, 1903. can operate (*per* Williams, Cooper and Chapman JJ.). *In re* LAND TRANSFER ACT, 1885, 8 N.Z. Gaz. L.R. 4. [*New Zealand.*]

—— **Betterment clause.**—*Per* Denniston, Edwards, Cooper and Chapman, JJ. (Stout C.J. dissenting)—Sec. 21 of the Public Works Act Amendment Act, 1900, had no application in a case of a subdivision of land into allotments for the purpose of sale where the sub-division did not involve the formation of new roads or streets. *Per* Stout C.J.—(1) Sec. 21 applied to a sub-division whether the landowner had laid out new roads or streets or not. (2) By sec. 2 of the Public Works Amendment Act, 1901, a person dedicating land under such circumstances for the widening of an existing road or street was entitled to compensation for the land so dedicated. (3) Sec. 2 of the last-mentioned Act giving the right to compensation "to be assessed under the provisions of the Public Works Act, 1894," the provisions of sec. 68 of the Public Works Act, 1894, including the betterment provision, became applicable. The new piece of road or street dedicated was a "public work" within the meaning of the Public Works Act. (4) A landowner was not, under

secs. 20 and 21 of the Act of 1900, bound to form and metal a strip dedicated for widening an existing road or street, but only a new road or street dedicated. (5) Where a land owner had sub-divided for the purposes of sale, and dedicated, he was entitled to compensation before actual sale or offering for sale. RIDDIFORD *v.* LOWER HUTT, MAYOR, &C., OF, 24 N.Z.L.R. 54. [*New Zealand.*]

—— **Prima facie case—Valuation of claimant's interest—Mandamus to Minister.**—Land having been resumed, T. claimed compensation as owner, and was paid. Subsequently B. claimed compensation for the same land. *Held*, that B., having disclosed a *prima facie* title to the land, the Minister was bound to cause a valuation of his interest to be made under sec. 96. *Held, further*, that the question of title between T. and B. could not be decided on an application for a mandamus to compel the Minister to make the valuation. *In re* BROUGHTON, 4 S.R. 662; 21 W.N. 225. [*New South Wales.*]

—— **Consolidation of claims.**—Where land is injuriously affected by a public work, and it is subsequently taken under the Public Works Acts, the owner, when claiming compensation, is not bound to consolidate his claims, but may claim separately for the injury prior to the taking of the land under the Acts. EASSON *v.* WARD, 7 N.Z. Gaz. L.R. 398. [*New Zealand.*]

—— **Form of claim.**—Where a claimant for compensation, claimed under the schedule to the Public Works Act, 1894, using Form B., for injury to land, and using Form A., also claimed for the taking of the land, *held*, that the retention in Form A. of the words, "and the construction of the said Public work," did not have the effect of including the claim in Form B., and that the rejection by the Compensation Court of the claim by Form B. was wrong. EASSON *v.* WARD, 7 N.Z. Gaz. L.R. 398. [*New Zealand.*]

—— **Mandamus to compensation Court.**—Mandamus to a compensation Court will lie where such Court has rejected a claim on an erroneous decision on the construction of a statute giving it jurisdiction. EASSON *v.* WARD, 7 N.Z. Gaz. L.R. 398. [*New Zealand.*] AND *see Re* BROUGHTON, *supra.*

—— **Interest on award.**—Land having been compulsorily taken under the Lands Compensation Act, 1890, and the amount of compensation determined by arbitration, the owner is entitled to interest on such amount from the time when the Board actually took possession of the land, that is, when the owner was deprived of the use, possession, occupation and enjoyment of the land. The mere fact that the owner did not press on the arbitration as he might have done, does not amount to such delay as will deprive him of his right to interest. The rate of interest was fixed at 4 per cent. GLENN *v.* BOARD OF LAND AND WORKS, 1905 V.L.R. 518; 26 A.L.T. 245; 11 A.L.R. 175. [*Victoria.*]

—— **Privy Council appeal.**—*See* PRIVY COUNCIL APPEAL. KINGDON *v.* HUTT RIVER BOARD, 7 N.Z. Gaz. L.R. 642. [*New Zealand.*]

—— **Payment into Court—Payment out — Costs.** — On a petition for payment out of Court of moneys paid in by the Constructing Authority under sec. 47 of the Public Works Act, 1900, the liability of the Constructing Authority as regards the costs of an incumbrancer of a dowress were limited to two guineas and the costs of an affidavit of service. *In re Halstead United Charities* (L.R. 20 Eq. 48) and *In re Artizans and Labourers' Improvement Act*, 1875; *Ex parte Jones* (14 Ch. D. 624), followed. *Re* BLAIR, 22 W.N. 97. [*New South Wales.*]

The Constructing Authority is not liable for the costs occasioned by the presence of remaindermen in the Master's office on applications for the re-investment in land of compensation moneys duly paid into Court under the Public Works Act, 1900, sec. 47. In a case, however, where the remaindermen attended on an application for the approval of the Master of a specific re-investment and their presence was of material and substantial benefit to the fund, their costs were ordered to come out of the fund. *Re* RAPHAEL, 5 S.R. 12; 22 W.N. 17. [*New South Wales.*]

Where the Constructing Authority pays money into Court under the Public Works Act, 1900, in consequence of adverse claims being made thereto, which are based on the different constructions which may be placed on a settlement or will in the title, and these claims are subsequently litigated, the Constructing Authority will not be required to pay the costs of the unsuccessful claimants to the fund nor such of the costs of the successful claimants as have been caused by the enquiry as to such claims. *In re Gregson's Trusts* (2 Hemm. & M. 504); *In re Sarah Williams* (19 N.S.W. Eq. 223) not followed on this point. *In re Styan* (John 387); *Ex parte Yates* (20 L.T. 940), and *In re Catling* ([1890] W.N. 75), followed. *In re* GOODWIN, 4 S.R. 682; 21 W.N. 222. [*New South Wales.*]

It is only when the moneys payable for lands compulsorily resumed by the Constructing Authority under sec. 147 (1) of the Public Works Act, 1900, are paid into Court either by the Constructing Authority or with its consent, that the Constructing Authority is liable for the costs mentioned in sec. 57. No costs are payable by the Constructing Authority under sec. 128 of the Public Works Act, 1900, in cases where no conveyance has been executed under sec. 127. The Court of Equity has no jurisdiction over the costs

mentioned in sec. 128 of the Public Works Act, 1900; the Master in Equity taxes such costs, not as an officer of the Court, but by virtue of the statutory authority conferred on him under sec. 128. The Minister for Works having by *Gazette* notification compulsorily resumed lands belonging to a lunatic not so found, agreed with the managers of the lunatic, who were appointed under sec. 103 of the Lunacy Act, 1898, as to the amount of compensation payable, but refused to pay the compensation moneys into Court and insisted on paying them to the managers. The managers were authorised by the Court, sitting in Lunacy and in Equity, to accept the moneys on condition of paying them into the Equity Court. The managers, having accepted the moneys, paid them into Court, purporting to do so under the Public Works Act, 1900, and presented the usual petition under that Act for the re-investment in land of the said moneys. *Held*, affirming the decision of A. H. Simpson C.J. in Eq., that the Minister was not liable for the costs mentioned in sec. 57 of the Public Works Act, 1900. But *held*, reversing the decision of A. H. Simpson C.J. in Eq., that the Court had no jurisdiction to order the Minister to pay the costs mentioned in sec. 128 of the Act, nor to declare what costs, if any, were payable by the Minister under that section. *Per* Cohen J. Sec. 47 of the Public Works Act, 1900 has no application to a case where lands are purchased or taken from a lunatic or idiot, not so found. *Re* McMillan, 5 S.R. 350; 22 W.N. 16, 75. [*New South Wales.*]

Costs of action—Arbitration and award.—The defendants tendered to the plaintiffs £2000 as compensation in respect of certain minerals under land resumed for railway purposes. The claim being referred to arbitration the plaintiffs were awarded £18450. The defendants being dissatisfied with the award compelled the plaintiffs, under sec. 116, to bring an action, when the plaintiffs recovered verdict for £17,609, being less by £841 than the award of the arbitrators. *Held*, that by the unambiguous language of sec. 116 the plaintiffs must bear all the costs both of the action and of the arbitration, notwithstanding the inadequate tender made by the defendants. Pacific Co-operative Steam Coal Co. *v.* Railway Commissioners, 5 S.R. 87. [*New South Wales.*]

RABBIT.

See Pastures Protection.

RACECOURSE.

See Public Reserves.

RAILWAYS.

Commissioner—Employ of Government.—The Commissioner of Railways is not included in sec. H. of the Shortening Ordinance (Interpretation Act, 1898). *Quære*, whether he is a person in the employ of the Government. O'Brien *v.* Commissioner of Railways, 7 W.A.L.R. 119. [*Western Australia.*]

—— **Garnishee order against Commissioner.**—*See* Garnishee. Drew *v.* Middleton, 1905 Q.W.N. 3. [*Queensland.*]

—— **Industrial arbitration.**—The Railway Commissioners are subject to the awards of the Arbitration Court. *In re* The Painters' Award, 1905 A.R. 33. [*New South Wales.*]

Officer—Removal — Compensation. — An officer or employee who held office in the Railway Department at the time of the passing of Act No. 767, and who, having then come under the control of the Commissioners, was thereafter removed from the service on the ground that the Commissioners had no longer any use for his services, and not for any fault of his own, is by virtue of sec. 93 of the Railways Act, 1890 (sec. 72 of Act No. 767) entitled to compensation as provided by sec. 16 of Act No. 160, *viz.*, for each year of service one month's salary according to the rate paid to him at the time of his removal. Brown *v.* Victorian Railway Commissioners, 1905 V.L.R. 472; 27 A.L.T. 25; 11 A.L.R. 276. [*Victoria.*]

By-law—Proof of publication—Reasonableness.—It is sufficient proof of publication of by-laws and regulations as required by the Railways Amendment Act, 1879 (43 Vic. No. 10), sec. 5, that the substance of the matter required to be published is set forth in a copy of the Government *Gazette*, produced in evidence, and is shown to be contained in a book kept in a box labelled "toll-board" near the door on the wall of a particular railway station. A regulation requiring notice of claim for damage to goods in transit to be given to the Commissioner within four days after delivery is not unreasonable. Smith *v.* Commissioner for Railways, 7 W.A.L.R. 1. [*Western Australia.*]

Negligence—Waiver of notice—Evidence.—Certain machinery carried by the defendant by rail from Fremantle to Perth, for the plaintiff company, was found on delivery to be damaged. Within four days after the delivery the plaintiff company requested that an officer of the defendant should be present at the opening of the cases containing the machinery. An officer who was employed by the defendant as claims clerk was sent, and the plaintiff company's representative complained to him of the condition of the goods. No formal claim for compensation was made within four days of delivery as

required by the railway regulations. There was evidence that dog-hooks had been used by the defendant in handling the goods at Fremantle. In an action for damages the jury, in reply to questions submitted to them, found (a) that the appellant in loading or unloading the machinery was guilty of negligence whereby it was injured; (b) that the respondents did not make a claim for damage within four days of delivery of machinery at the Perth Railway Station; and (c) that the appellants waived the omission to make such claim. Damages £578. The defendant appealed with respect to findings (a) and (c) on the ground that they were against evidence and the weight of evidence. *Held*, that there was evidence on which the jury might find negligence on the part of the defendant. *Held, also*, (Parker A.C.J. dissenting), that there was evidence on which the jury might find that the defendant had waived his right to notice within four days of delivery in respect of the goods delivered after the attendance of the defendant's officer, and that it could be assumed that the damage as found by the jury was in respect of the goods delivered after that interview. *Per* Parker A.C.J.: The defendant's officer had no authority to waive the notice, and there was no evidence of ratification, nor any evidence to support the finding of the jury on the question of waiver. W.A. NEWSPAPER CO. *v.* COMMISSIONER OF RAILWAYS, 7 W.A.L.R. 6. [*Western Australia.*]

False imprisonment—Liability of Commissioners for act of officer.—One Furlong, a probationer in the employ of the Railway Commissioners, being off duty and at a station other than that at which he was employed, was asked by the stationmaster to take the tickets of passengers leaving the station. Whilst waiting for these passengers to arrive he was, as he alleged, assaulted by the plaintiff, who was entering the station. Furlong then of his own accord and without instructions gave the plaintiff in charge to a constable for assaulting him in the execution of his duty, and plaintiff was taken to the police station. At the hearing the charge was altered to one of common assault, and was dismissed. *Held*, that apart from the Government Railways Act Furlong had no authority to give the plaintiff in charge, since such authority was not necessary to the fulfilment of the duties entrusted to him, and that he had no such authority under the Act since secs. 114 (c), 118, conferred no power to arrest for an assault, and there was no evidence that Furlong was obstructed in the execution of his duty. The Commissioners were therefore not liable in an action of false imprisonment. Whether Furlong was at the time acting as a servant of the Commissioners, *quære*. HAMILTON *v.* RAILWAY COMMISSIONERS, 5 S.R. 267; 22 W.N. 69. [*New South Wales.*]

And *see* O'BRIEN *v.* COMMISSIONER FOR RAILWAYS, 7 W.A.L.R. 119.

REAL ESTATE DESCENT.

See EXECUTOR AND ADMINISTRATOR—SETTLEMENT.

REAL PROPERTY.

Tenant at will.—*See* ESTATE. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

Sale of interest under will.—Where a person is under a will beneficially interested in an estate which consists of chattels and land under the Transfer of Land Act, 1890, the sheriff may, under sec. 125 of the Real Property Act, 1890, sell the interest of such person in such land. TRUSTEES EXECUTORS AND AGENCY CO. *v.* BUTLER, 1905 V.L.R. 650; 27 A.L.T. 63; 11 A.L.R. 365. [*Victoria.*]

Real Property Act (N.S.W.).—*See* LAND TRANSFER.

Registration of deeds.—*See* REGISTRATION OF DEEDS.

REGISTRATION OF DEEDS.

Mode and effect of registration.—A memorial containing all the particulars required by sec. 4 of the Registration Act, 6 Geo. IV. No. 22 (now sec. 185 of the Real Property Act, 1890), and verified by the oath of a competent witness when it is presented to the Registrar for registration, is an effective instrument for registration purposes, although at the time when the memorial is signed by one of the parties to the original instrument, the date of the instrument and the name of the attesting witness have not been inserted in the memorial. Anyone who can swear that the memorial contains a true statement of the particulars in the original instrument is a competent person for the purpose of verifying the memorial. A description of the original instrument in the memorial, under the column "nature of instrument," as "agreement for marriage settlement," is sufficient, without setting forth the limitations of the instrument. Registration under the statute of an instrument conferring an equitable estate only, confers upon the holder priority over a subsequent transferee of the legal estate for value and without notice. *Wharton* v. *Greville* (1 V.L.T. 76), approved. DARBYSHIRE *v.* DARBYSHIRE, 2 C.L.R. 787; 1905 V.L.R. 239; 26 A.L.T. 128; 11 A.L.R. 14, 417. [*Victoria.*]

RELIGIOUS, CHARITABLE AND EDUCATIONAL TRUSTS.

See TRUSTS.

RES JUDICATA.

See LANDLORD AND TENANT.—CLISDELL *v.* GIBNEY, 4 S.R. 670; 21 W.N. 237. [*New South Wales.*] PRACTICE. — MACINTOSH *v.* DUN, 5 S.R. 99; 22 W.N. 19. [*New South Wales.*]

And *see* JUSTICES—SMALL DEBTS RECOVERY.

RESTRAINT ON ANTICIPATION.

See HUSBAND AND WIFE—WILL.

RESUMPTION.

See PUBLIC WORKS.

RIPARIAN RIGHTS.

See WATER.

RIVER.

See WATER.

RIVER BOARDS ACT.

River—Extent of river bed—Rights of River Board and owner—Compensation for river bed taken under Public Works Act, 1894. —KINGDON *v.* HUTT RIVER BOARD, 7 N.Z. Gaz. L.R. 634. [*New Zealand.*]

ROAD.

Dedication—Land Transfer Act certificate.—A road was laid off by a Highway Board through private land, with the consent of the owner, who accepted a small sum from the Board for the freehold of it, but did not convey or dedicate it by deed. The use of it as a public highway was permitted by the succeeding owner, who recognised it as a public highway on subsequently dividing his land for sale, and showed it as such on his sub-divisional plan, and the use of it as a public highway was afterwards continued. In 1891 the Lower Hutt Borough was incorporated. In 1895, on the application of the then owner of the adjoining lands on both sides of the road, the land was brought under the Land Transfer Act, and a certificate of title was issued to him which included the roadway and did not show any road. The defendant purchased under this certificate and was registered as proprietor. *Held*, that the road was a public highway at the date of the incorporation of the Lower Hutt Borough, and became a street of the borough on its incorporation by virtue of sec. 231 of the Municipal Corporations Act, 1886, and that it remained a public street, notwithstanding the issue of the certificate of title and the registration of the transfer to the defendant, by virtue of sec. 6 of the Land Transfer Act, 1885, Amendment Act, 1889. Even if a road is used only by a single owner and by those visiting him, if it is so used as a public road, and not by permission, or as a private right-of-way, that amounts to public use which is evidence of dedication. THE MAYOR, COUNCILLORS AND BURGHESSES OF THE BOROUGH OF LOWER HUTT *v.* YEREX, 24 N.Z.L.R. 697. [*New Zealand.*]

—— **Intention.** — To constitute dedication of a highway by the owner of the soil there must be an intention to dedicate. Long user by the public with the knowledge of the owner is evidence of an intention to dedicate. LEVISTON *v.* NARRACAN, PRESIDENT, &C., OF SHIRE OF, 27 A.L.T. 106; 11 A.L.R. 432. [*Victoria.*]

—— **Public Works Act, 1903, sec. 2.**—It is sufficient compliance with the Public Works Act, 1903 sec. 2, sub-secs. 1, 3, and 4 if the dedication be made and the instrument of dedication registered after sale and before registration of any transfer to the purchaser. YORK BAY LAND CO. *v.* BARR, 7 N.Z. Gaz. L.R. 590. [*New Zealand.*]

—— **Observations on.**—*See* MILLER *v.* MCKEON; MCKEON *v.* MILLER, 5 S.R. (N.S.W.) 128; 22 W.N. 9; 11 A.L.R. 489. [*New South Wales.*]

Formation and user—Negligence.—The principles which govern the duties of the Government in New South Wales are not identical with those which at common law regulate the obligations of highway authorities in England. Australia being a newly settled country, the Government in undertaking for the use of the public the first formation of roads, whether the soil has or has not been formally dedicated as a highway, is bound only to take such care to avoid danger to persons passing along such roads as is reasonable under all the circumstances, and upon the assumption that those persons will themselves use ordinary care. The cir-

cumstances to be regarded include (*a*) the nature of the locality; (*b*) the extent of local settlement; (*c*) the probabilities as to the number of persons likely to use the road; (*d*) the money available to the Government for the purpose. Where a road has originally been formed by the Government with reasonable care, as above defined, such formation cannot subsequently be treated as negligent, within the doctrine of misfeasance, merely because by reason of altered circumstances, local conditions become such that if the road were to be made anew, further precautions might reasonably be taken. Observations as to the degree of care properly required from the public in using roads in a country district. MILLER *v.* MCKEON, 5 S.R. 128; 22 W.N. 9; 11 A.L.R. 489. [*New South Wales.*]

Care of — County council — By-law.—*See* LOCAL GOVERNMENT. COLLINS *v.* WOLTERS, 24 N.Z.L.R. 499; 7 Gaz. L.R. 63. [*New Zealand.*]

Roads Act—Sale under order of Court—Certificate of title.—Where land is sold under an order of the Supreme Court, pursuant to sec. 154 of the Roads Act, 1902, for non-payment of rates, and the purchaser obtains the prescribed certificate of sale, such certificate is equivalent to a transfer by the registered proprietor of his interest. The direction to the Registrar of Titles, in the same section, to register such certificate in like manner as a transfer of the land does not authorise the Registrar to dispense with the production of the duplicate certificate of title, and the Registrar is debarred from registering without such production, except as authorised by sec. 74 of the Transfer of Land Act, 1893. WATSON *v.* REGISTRAR OF TITLES, 7 W.A.L.R. 45. [*Western Australia.*]

—— **Pastoral lease—Occupier.**—A holder of a pastoral lease from a private person is deemed to be in exclusive possession, and is liable to be rated as occupier. THE WANEROO ROADS BOARD *v.* GIBBS, 7 W.A.L.R. 190. [*Western Australia.*]

Compensation for closing.—*See* MUNICIPALITIES. SYMONS *v.* MAYOR, &C., OF FOXTON, 7 N.Z. Gaz. L.R. 477. [*New Zealand.*]

Riparian rights.—*See* WATER. SKEY *v.* MAYOR, &C., OF DUNEDIN, 24 N.Z.L.R. 804; 7 Gaz. L.R. 657. [*New Zealand.*]

And *see* LAND TRANSFER—MUNICIPALITIES —PUBLIC WORKS.

ROYAL COMMISSION.

Restraint of enquiry by Supreme Court—Reasonable excuse for refusing to give evidence.—Royal Commissions of enquiry are lawful; and the Courts have no power to restrain persons acting under the authority of such Commissions, provided they do not invade private rights, or interfere with the course of justice. A Royal Commission was issued by the Government with the advice of the Executive Council, authorizing and appointing certain persons to make "a diligent and full inquiry into the formation, constitution, and working of" a certain industrial union registered under the Industrial Arbitration Act, and also into the following questions: Whether that union was an evasion of the Trade Union Act or the Industrial Arbitration Act; whether the existence of that union was any obstacle to the presentation of any dispute which might arise in the industry to which it belonged to the Industrial Arbitration Court; whether its registration under the last-mentioned Act hampered that Court from doing justice in any such dispute; and whether any alteration of the law, and, if so, what, was necessary in respect of the matters to be inquired into. Questions relating to the status of the union had been raised in certain proceedings before the Court of Arbitration, which had given a decision in favour of the union. *Held*, that there was nothing unlawful in the appointment of such a Commission. *Held, also*, that the alleged impropriety of the appointment of the Commission was not a "reasonable excuse" for the refusal of a witness to be sworn and give evidence, when duly summoned to appear before the Commission under sec. 3 of the Royal Commissioners Evidence Act (No. 23 of 1901). Decision of the Supreme Court ([1904] 4 S.R. (N.S.W.) 401), reversed. CLOUGH *v.* LEAHY, 2 C.L.R. 139; 11 A.L.R. 32. [*New South Wales.*]

Refusal to give evidence.—In an information against a witness for refusing to answer a question after being served with a summons under sec. 8 of 1901 No. 23, it is not necessary to allege that the evidence of the witness was in the judgment of the Commissioner material to the enquiry. Under sec. 3 the Commissioner can summon any person whom he think can give material evidence, and the exercise of his discretion in this respect cannot be challenged. CLOUGH *v.* BATH, 22 W.N. 152. [*New South Wales.*]

Summons to attend.—A witness was served with a summons under sec. 3 of 1901 No. 23, calling upon him to attend at 10.30 a.m. on May 22nd, and so on from day to day, as might be required. The summons was served on the afternoon of May 22nd. *Held*, that the witness was bound to attend after service of the summons. CLOUGH *v.* BATH, 22 W.N. 152. [*New South Wales.*]

Signature of Commission.—*See* CROWN. CLOUGH *v.* BATH, 22 W.N. 152. [*New South Wales.*]

SALE OF GOODS.

Where contract made.—The contract is presumptively made at the place of acceptance. Therefore, where an order for goods was given from Fremantle, Western Australia, shipment to be on order of defendant, f.o.b. Cairns, at the defendant's risk from the date of shipment, payment by draft on the defendant, exchange added, and were shipped in accordance with the order, *held*, that the contract was made at Cairns. MAYERS & Co. *v.* JOHNSON & Co., 1905 Q.W.N. 39. [*Queensland.*]

Construction—Goods ordered and shipped from abroad.—The plaintiff entered into two contracts with the defendant in Sydney, one to purchase at a fixed price per mille certain slates to be shipped from England, the other to purchase slates at a fixed price c.i.f.e., to be shipped from America. The vendor in both cases agreed to pay freight and insurance, and to pass entry and pay wharfage on receipt of cheque. *Held*, that the goods were at the risk of the vendor until delivered in Sydney. LORIMER *v.* SLADE, 5 S.R. 71; 22 W.N. 34. [*New South Wales.*]

Goods already sold—Re-sale.—A person, who has sold and delivered goods to a buyer, cannot re-sell the goods and give a good title thereto under sec. 27 sub-sec. (1) of the Sale of Goods Act, 1895. Sec. 27 sub-sec. (1) of the Sale of Goods Act, 1895, applies in two cases:—(1) Where the seller, being in possession of goods at the time of sale, continues in possession; (2) Where the seller, not being in possession of goods at the time of sale, subsequently obtains possession, but does not deliver them to the buyer. MITCHELL *v.* JONES, 7 N.Z. Gaz. L.R. 524. [*New Zealand.*]

Warranty—Damages.—Appeal from the local Court, Perth. The appellants sued for £28 10s., the amount of defendant's promissory note and interest. The defendant counter-claimed £75 16s. for breach of warranty of a cow which had been sold to her by the plaintiffs, and which was subsequently destroyed by order of a Government inspector as suffering from pleuro-pneumonia. The counterclaim comprised the price of the cow destroyed, loss of milk from that and other cows which had become affected through being inoculated by the respondent to prevent the spread of the disease amongst her herd, and the cost of inoculation The claim was admitted, and the action proceeded for the counterclaim. The items for the counterclaim included amounts for the loss of milk in varying quantities extending over 107 days. The magistrate allowed the full amount of the counterclaim, less £14 for one fortnight's loss of milk for the first fourteen days after inoculation of the herd; net amount allowed, £61 16s. The plaintiffs appealed on the ground that there was no warranty in law, that the damages awarded were not consequential upon the injury and were excessive. *Held*, (1) that the question of whether there is any particular case of warranty or not is one of fact, and not of law; (2) that the plaintiffs, having sold an infected animal, which to their knowledge was to be placed with other animals of the defendant, were liable for damages due to the consequent infection of such other animals; (3) that inoculation of such animals by the defendant being a reasonable precaution under the circumstances in order to minimise the damage and prevent further infection, the plaintiffs were liable for losses due to such inoculation, as being consequent upon the original injury. DEMPSTER & WALSH *v.* SIMPSON, 7 W.A.L.R. 103. [*Western Australia.*]

Quantity purchased—Damages.—A buyer who enters into a contract to purchase goods can only be required to accept the exact quantity contracted for, unless the original contract is subsequently qualified. The measure of damage for breach by the buyer of such a contract is the difference between the contract price and the price which the goods would have realised if sold immediately on the repudiation. The rights of the parties are not affected by the rules of a Stock Exchange under a contract not made between members of the Stock Exchange, or on such Exchange. MCCLAY *v.* SEELIGSON, 7 W.A. L.R. 87. [*Western Australia.*]

Damages—Sheep—Breed not specified.—BURLING *v.* MCLENNAN, 8 N.Z. Gaz. L.R. 91. [*New Zealand.*]

SATISFACTION.

Of debt by legacy.—*See* WILL. *In the estate of* YULE, 24 N.Z. Gaz. L.R. 431. [*New Zealand.*]

SAVINGS BANK.

Order for payment.—An order for payment is when handed by the depositor to the payee together with the pass book, to all intents and purposes a cheque. MONTGOMERY'S BREWERY Co. *v.* M'KENZIE, 26 A.L.T. Supp. 1. [*Victoria.*]

SCHOOL.

See EDUCATION.

SCIENTER.

See ANIMAL.

SERVICE AND EXECUTION OF PROCESS.

See FEDERAL LAW.

SETTLED ESTATE.

See SETTLED LAND.

SETTLED LAND.

Infant's land—lease.—The Supreme Court of New Zealand has by the effect of the Supreme Court Act, 1882, general jurisdiction to authorise the guardian to exercise a lease with purchasing clause of an infant's land, not subject to settlement, in lieu of sale; and where there is no duly appointed guardian, the statutory guardian is the proper person to move for and receive authority to execute such lease. *In re* RATHBONE, 8 N.Z. Gaz. L.R. 1. [*New Zealand.*]

Permission to reside during widowhood.—A devise of a freehold residence in trust to permit the wife to reside therein during her widowhood, *held* to give the wife the powers of a tenant for life under the Settled Lands Act, 1886. QUEENSLAND TRUSTEES LTD. *v.* FINNEY, 1905 S.R. (Q.) 98. [*Queensland.*]

Trustees of settlement—Powers—Appointment.—Trustees of a settlement cannot exercise the powers conferred on the trustees of a settlement by sec. 33 of the settled Land Act, 1886, unless they are trustees of the settlement within the meaning of sec. 2 (8). If an application were made to the Court under sec. 33 for the appointment of a person to exercise on behalf of an infant tenant for life the powers conferred by that Act on a tenant for life, the Court would not appoint a solicitor, who was sole trustee of the settlement, with power to charge the trust estate for his services as solicitor to the trust. *In re* NGAWAKAAKUPE, 7 N.Z. Gaz. L.R. 450. [*New Zealand.*]

Appointment of new trustees by Registrar.—A Registrar has no jurisdiction in the absence of a Judge of the Supreme Court to appoint new trustees under sec. 13 of the Settled Land Act, 1886. *Re* LUXTON, 24 N.Z.L.R. 687; 7 Gaz. L.R. 468. [*New Zealand.*]

And see ESTATE.

SETTLEMENT.

Share when vesting.—By a marriage settlement bearing date the 6th October, 1846, made between Henry Spencer of the first part, Sarah Mayo of the second part, and T.H. and A.H.S. of the third part, certain properties were, after limitations whereby the legal estate became vested in the successive tenants for life, granted unto T.H. and A.H.S. upon trust that they and the survivor of them and the heirs and assigns of such survivor should immediately after the decease of the survivor of the tenants for life sell and dispose of the said property and stand possessed of the moneys to be produced by such sale upon trust to invest and to receive the annual proceeds of the investment in trust for all and every the child and children of the said Sarah Mayo before marriage to the said Henry Spencer and also and together with any child or children that might be born of the said Sarah Mayo after her said intended marriage, who being a son or sons should attain twenty-one, or being a daughter or daughters should attain that age or be married in equal shares. The marriage settlement then proceeded in these words:—"And if there shall be but one such child surviving, whether of those now living or born after the said intended marriage, the whole to be in trust for that one child." H.S., one of the children interested in the settlement, attained the age of twenty-one before the death of the surviving tenant for life, but died leaving his widow, the present plaintiff. *Held*, that the shares of H.S. became vested on his attaining the age of twenty-one years. LANGDON *v.* SPENCER, 7 W.A.L.R. 174. [*Western Australia.*]

Construction—Meaning of "heirs."—By a voluntary post-nuptial settlement, dated the 25th June, 1847, the remainder in fee of certain lands was conveyed to trustees on trust for the "right heirs" of the tenants for life. *Held*, that Lang's Act (26 Vic. No. 20) had no application, and that the words "right heirs" must be construed, and the parties entitled in remainder ascertained, by the law of succession in force at the date of the settlement. *Morrice* v. *Morrice* (14 N.S.W. Eq. 211) distinguished. The effect of the Real Estate of Intestates Distribution Act (26 Vic. No. 20) considered and explained. *In re* GOODWIN, 4 S.R. 682; 21 W.N. 222. [*New South Wales.*]

Construction—"Posthumous"—By a post-nuptial settlement lands were conveyed to trustees on trust to receive the rents and profits of the same during the respective minorities of the several children of the settlor (naming them) "and any posthumous child or children that might be born within a legal period of time after the decease of the" settlor, and to apply the same equally for the use and benefit of "the said several children."

Held, that "posthumous" should be construed as meaning "born after the date of the settlement" and not as meaning "born after the death of the settlor." *In re* GOODWIN, 4 S.R. 682; 21 W.N. 222. [*New South Wales.*]

Rectification—Power to purchase realty added.—NICHOLS *v.* EQUITY TRUSTEES, &C. Co., 11 A.L.R. (C.N.) 57. [*Victoria.*]

Power of appointment.—*See* POWER OF APPOINTMENT.

Stamp duty.—*See* STAMP DUTY.

SHEEP.

See STOCK.

SHERIFF.

Fees.—*See* EXECUTION.

Execution.—*See* EXECUTION.

Interpleader.—*See* INTERPLEADER.

SHIPPING.

Shipping Act, 1894, sec. 7—Number of seamen.—The First Schedule to the Shipping and Seamen Act Amendment Act, 1894, which specifies the number of greasers to be carried in sea-going steam-vessels, does not enact anything more than sec. 7 of the Act enacts, and, the word "greasers" being omitted from that section, a penalty can be inflicted under that section only if the prescribed number of seamen, firemen, and trimmers is not carried. FLEMING *v.* RAINEY, 24 N.Z.L.R. 158. [*New Zealand.*]

Harbour Board—Fees.—A vessel entered a harbour in a leaky condition. She was first beached, then shifted several times, and finally taken into deep water and anchored, all these operations being performed under the charge of the Harbour-master and pilot of the local Harbour Board. *Held*, that all these successive movements of the vessel made a chain of continuous services, for which the Harbour Board could only charge as one act from the time of her beaching until her final mooring at the anchorage. THE NAPIER HARBOUR BOARD *v.* TYSER LINE (LTD.), 24 N.Z.L.R. 59. [*New Zealand.*]

SHOP.

See EARLY CLOSING—FACTORIES AND SHOPS.

SHOPS AND OFFICES.

See EARLY CLOSING.

SLAUGHTERING.

Notice—Exemption.—Although by sec. 8 of the Cattle Slaughtering Act, 1902, the manager of an establishment for the extraction of tallow, which is also a licensed house, is exempted from giving the notice required by sect. 4 of his intention to slaughter cattle, such exemption will not operate in favour of the manager of such establishment who carries on a retail trade by selling fresh beef regularly to persons in the district. CALMAN *v.* TINDAL, 22 W.N. 176. [*New South Wales.*]

Factories Act—Abattoir.—The Slaughtering and Inspection Act, 1900, must be read, as far as it affects abattoirs, as overruling the Factories Act, 1901, and it is not necessary to register as a "factory" under the Factories Act, 1901, an abattoir established and maintained under the Slaughtering and Inspection Act, 1900, by a local authority. KEDDIE *v.* THE MAYOR, COUNCILLORS, AND BURGHESSES OF THE BOROUGH OF TIMARU, 24 N.Z.L.R. 704; 7 Gaz. L.R. 535. [*New Zealand.*]

Scale of fees.—*Held*, that the words "as are agreed on," contained in the proviso to sec. 27 of the Slaughtering and Inspection Act, 1900, do not import a contractual relation between the "controlling authority" and the sellers of meat slaughtered at a "meat export slaughter-house," but must be construed as meaning "as are fixed by the controlling authority"; and the plaintiffs were entitled to a mandamus to compel the defendants to fix a scale of fees. CHRISTCHURCH MEAT CO., LTD., *v.* THE MAYOR, &C., OF CHRISTCHURCH, 7 N.Z. Gaz. L.R. 70. [*New Zealand.*]

SMALL DEBTS RECOVERY.

Jurisdiction—Abandonment of excess.—A plaintiff in the Small Debts Court cannot, by executing a deed of release without the defendant's knowledge or consent, abandon the excess, and so bring the amount of his claim within the jurisdiction of the Court. *Ex parte* NOEL, 5 S.R. 445; 22 W.N. 131. [*New South Wales.*]

An abandonment of the excess of the plaintiff's claim over £10 is not a splitting of the cause of action where the action is to recover unliquidated damages. *Ex parte* BASHFORD, 22 W.N. 44. [*New South Wales.*]

Where a plaintiff abandons the excess of

his claim over the limit of a magistrate's jurisdiction in order to bring the case within the jurisdiction of the magistrate, he is at liberty to prove any of the items in his particulars in full, and recover up to the amount of the limit of the jurisdiction. *Re Broad ; Harper* v. *Conway* (N.Z.L.R. 1 S.C. 79), followed. The WAIRAU HOSPITAL AND CHARITABLE AID BOARD *v.* THE PICTON HOSPITAL AND CHARITABLE AID BOARD, 24 N.Z.L.R 45. [*New Zealand.*]

—— **Leave to enter plaint—Affidavit.**—By sec. 4 of the Small Debts Act Amendment Act of 1894 the leave of the magistrate of the local Court is required for the entry of plaints in certain cases. By sec. 74 of the Small Debts Act, 1863, giving power to frame rules, it is provided that until such rules shall be framed, and also in cases where no such rule shall apply or be prescribed by Ordinance, "the rules and practice of the County Courts in England shall be in force and govern the proceedings as far as the same can or may be applicable." An affidavit in support of an application for leave to enter a plaint in the Local Court of Fremantle, for service of a summons within the Local Court District of Perth, was made by the clerk to the plaintiff's solicitor. The affidavit set forth merely that the deponent was informed and verily believed that the defendant was indebted to the plaintiffs in the sum of £5 12s. for goods sold and delivered ; that the cause of action arose in part at Perth ; and that he was informed and verily believed that the defendant resided at Perth. *Held*, that in the absence of a rule prescribing how leave should be obtained in the cases where leave is required, the English County Court procedure applies. The English rules require an affidavit to be filed in support of the application, in the prescribed English County Court form, by the proposed plaintiff, or some person on his behalf, who has knowledge of the facts, setting forth the facts on which the application is grounded, and the filing of such an affidavit is a condition precedent to the granting of leave by the magistrate for the entry of the plaint. *Held, also*, that the magistrate having granted leave on an affidavit not complying with these requirements, the want of jurisdiction is apparent on the face of the proceedings, and cannot be waived and a writ of prohibition is of course. WILSON & CO. *v.* GRAY, 7 W.A.L.R. 95 ; KARIM *v.* RHAIL, 7 W.A.L.R. 127. [*Western Australia.*]

Practice—Service of summons—Irregularity—Appeal.—By rule 30 of the Rules under the Small Debts Ordinance, 1863 (27 Vic. No. 21), it is provided that a summons must be served in a foreign Local Court district at least ten days before the return day, and by r. 123, no part of Sunday, Christmas Day, Good Friday, or any public holiday shall be included in the computation of time in cases which embrace the service of a summons. *Held*, that irregularity of service does not oust the jurisdiction of the magistrate. The remedy should be by appeal. *Moderana* v. *Backhouse* (7 W.A.L.R. 39 ; 1 C.L.R. 675), followed. *Held, also*, that where the want of jurisdiction is not apparent on the face of the proceedings, and the applicant delays taking proceedings until after judgment is executed, when he might have taken proceedings prior thereto with a view of staying the action, the Court will not interfere by way of prohibition. HILL BROS. *v.* BETRIX, 7 W.A.L.R. 116. [*Western Australia.*]

—— **Action against executor—Judgment recovered—Local Courts Act, 1886, sec. 86—Election.**—M.A.F. and C.E.F., as executrixes of D.F., deceased, and under a power in his will, carried on the business of their testator until the death of C.E.F. After the death of D.F., and before the death of C.E.F., goods were supplied by the plaintiffs for the purposes of the business, and M.A.F. and C.E.F. gave to the plaintiffs promissory notes for the price of such goods. After the death of C.E.F., the plaintiffs brought an action in the Local Court against M.A.F., as surviving executrix of D.F., in respect of the balance due on these promissory notes, and recovered judgment. That judgment remaining unpaid, the plaintiffs commenced a second action in the local Court for the price of the same goods, against M.A.F. personally, and X. as the administrator of the estate of C.E.F. On a plea of *res judicata*, the plaintiffs were nonsuited in the local Court. *Held*, on appeal, that, there being one liability only, the doctrine of election had no application, and that the amount claimed was a debt for which the executrixes of D.F. were jointly liable, personally, and not *de bonis testatoris ;* and, therefore, that M.A.F. being personally liable on the judgment in the first action her plea of *res judicata* to the second action was valid ; but that, by virtue of sec. 86 of the Local Courts Act, 1886, the second action was maintainable against X. F. H. FAULDING & CO. *v.* FOTHERINGHAM, 1904 S.A.L.R. 1. [*South Australia.*]

—— **Set-off of solicitor's costs.**—*See* ATTORNEY AND SOLICITOR. ROBINSON *v.* VALE, 1905 V.L.R. 405 ; 26 A.L.T. 217 ; 11 A.L.R. 189. [*Victoria.*]

Appeal—Counterclaim for less than £50.—The fact that the amount of the claim in the original action exceeded £50 does not give a right to appeal on matter of fact from a decision of a magistrate upon a counterclaim for an amount not exceeding £50. CROSBY *v.* HARDEN, 24 N.Z.L.R. 827 ; 7 Gaz. L.R. 481. [*New Zealand.*]

—— **Appealable amount.**—Where the claim against a solicitor was for less than £5, but he

had a set off for more than that amount, *held*, that the amount in respect of which he was aggrieved exceeded £5 within the meaning of sec. 21 of the Justices Act, 1904. ROBINSON *v.* VALE, 1905 V.L.R. 405; 26 A.L.T. 217; 11 A.L.R. 189. [*Victoria.*]

—— **Excessive damages.**—*See* ANIMAL. MCKINNON *v.* DWYER, 27 A.L.T. 111; 11 A.L.R. 449. [*Victoria.*]

—— **Amendment.**—In appeals from Local Courts, the claim may be amended so that the Court may deal with the real dispute between the parties. FREEDMAN & CO. *v.* DAN CHE LIN, 7 W.A.L.R. 179. [*Western Australia.*]

SOLICITOR.

See ATTORNEY AND SOLICITOR.

SPECIFIC PERFORMANCE.

Illegal agreement—Sub-lease of conditional lease for other than grazing purposes.—The Court will not decree specific performance of an agreement to give a sublease of conditionally leased lands for other than grazing purposes, such an agreement being illegal under sec. 98 of the Crown Lands Act, 1884. LANGLEY *v.* FOSTER, 22 W.N. 214. [*New South Wales.*]

Waiver of tender of purchase money—Undue influence.—A refusal by a vendor of land to go on with the sale is a waiver of the necessity to tender either purchase-money or conveyance before the commencement by the purchaser of a suit for specific performance. The question considered whether specific performance should be decreed of an agreement for the sale of land by a woman whose agent in the matter had shortly before been in partnership with the husband of the purchaser, and who sold without other advice in the matter, the terms of the agreement being distinctly favourable to the plaintiff. Specific performance decreed, the evidence showing that the defendant was aware of the relation which had existed between her agent and the plaintiff's husband, and that the defendant had not in fact acted under any undue pressure or upon any misrepresentation. HINDLEY *v.* CAVE-BROWN-CAVE, 24 N.Z.L.R. 6. [*New Zealand.*]

Delay.—A delay of three months being accounted for by negotiations between the plaintiffs (respondents) and the Assets Board in obtaining its consent to join in the lease, and the suit having been commenced immediately afterwards, the plaintiffs (respondents) had not lost their right to relief by delay. PEARCE *v.* STEVENS, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176. [*New Zealand.*]

—— **Covenant by lessee to purchase.**—*See* LANDLORD AND TENANT. PLIMMER *v.* WELLINGTON EDUCATION BOARD, 24 N.Z.L.R. 153. [*New Zealand.*]

Title at date of certificate.—*Per* Edwards J.: The principle of *Wynn* v. *Morgan* (7 Ves. 202), and other similar cases (in which it has been held that it is sufficient to show a good title at the time of the Master's report), has no application to cases in which the plaintiff has neither himself a good title nor the right to compel others to make a good title at the time when the contract ought to be performed, and in which the other party has rescinded the contract before the action has been begun, and has pleaded the want of title in the plaintiff and the rescission of the contract as an answer to the claim. *Per* Chapman J.: The vendor has no right to sell that to which he cannot make a good title when the time for completion arises; but where the purchaser submits by his conduct or his pleadings to be bound by his contract the vendor is allowed by the peculiar doctrines admitted in a Court of equity to make a good title on the reference to the Master. PEARCE *v.* STEVENS, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176. [*New Zealand.*]

Trial—Judge without jury.—*See* JURY. QUINLAN *v.* GREAT NORTHERN BREWERY CO., 24 N.Z.L.R. 226. [*New Zealand.*]

STAGE CARRIAGE.

See VEHICLE.

STAMP DUTIES.

"Or other payment"—"Deed of gift."—The words "or another payment, or otherwise howsoever," in sub-sec. 1 of sec. 6 of the Stamp Acts Amendment Act, 1895, do not cover a cash payment of purchase-money, and a conveyance by which one person conveys land to another person connected with him by blood, to the extent to which it is in consideration of purchase-money paid in cash by the latter, either out of his own moneys or out of the moneys raised by him upon mortgage of the land, is not a deed of gift within the meaning of sec. 7 of the Stamp Acts Amendment Act, 1891, as amended by sub-sec. 1 of sec. 6 of the Act of 1895. Where a father paid over cash to his children on the understanding that they would apply it in part-payment of the purchase-moneys of lands being conveyed by him to them respectively, though it was expressly stated that

they were not to be under any obligation to so apply it, and they did in fact so apply it, *held*, that the conveyances amounted to deeds of gift of the lands to the extent of the moneys so paid over to and applied by them. In all such cases the Court will ascertain what the transactions really were in substance independently of their form. And an instrument may be a deed of gift to the extent of what is really given, though it is not wholly a deed of gift. In such a case the deed of gift duty is payable only upon what has been really given. WILLIAMS *v.* COMMISSIONER OF STAMPS, 24 N.Z.L.R. 658; 7 Gaz. L.R.301. [*New Zealand.*]

—— **Transferred property**—Property transferred by the classes of gift specified in sec. 11 of the Administration and Probate Act, 1903, is chargeable with duty at the rate which would be applicable if it had actually formed part of the estate; but sec. 11 does not require the transferred property to be treated as part of the estate so as to increase the rate of duty payable upon the estate proper. The duty on the transferred property is to be deemed a debt of the deceased payable by the executor before issue of probate. HEWARD *v.* R. 1905 V.L.R. 548; 27 A.L.T. 50; 11 A.L.R. 313, 494. [*Victoria.*]

Marriage settlement.—By an indenture it was recited that a marriage had been agreed upon and was shortly to take place between A. and B., and that the settlor, the mother of A. desired to make provision for A. and her children. The indenture then witnessed that in consideration of the said intended marriage, the trustees should hold certain property, upon trust for the settlor until the solemnization of the intended marriage and thereafter for the benefit of A. and her children. It was also provided that, if the marriage did not take place within 12 months, the indenture should be void. The settlor, A., B., and the trustees were all parties to the indenture and executed it. *Held*, notwithstanding that there was no recital of a treaty of marriage, and no evidence outside the indenture that the marriage was purchased by the settlement, that the indenture was a settlement in consideration of marriage within Schedule, Division VIII. to the Stamps Act, 1892, and therefore that it was not chargeable with any duty. *In re* SMITH'S SETTLEMENT, 1905 V.L.R. 203; 26 A.L.T. 187; 11 A.L.R. 58. [*Victoria.*]

Settlement—Children and grand-children interested.—Under a voluntary settlement executed by a settlor in 1873, and a deed poll executed by the settlor on the 10th of March, 1884, in exercise of a power reserved in the settlement, a certain fund became absolutely vested in a daughter of the settlor, subject to life interests in the settlor and his wife. The daughter settled this fund by her marriage settlement made on the 11th of March, 1884. The original settlor having died, duty was assessed upon the fund under sec. 25 of the Deceased Persons' Estates Duties Act, 1881, and an allowance of one-half of the duty was made under sec. 37 of that Act, which provides that where children or grandchildren are beneficially entitled the Commissioner shall refund or allow for the benefit of such children or grand-children one-half of the duty payable on the amount coming to them. *Held*, that sec. 37 had not the effect of withdrawing the amount allowed off the duty from the trusts of the daughter's marriage settlement, and of making a statutory gift of it to the daughter personally; and that it must be retained by the trustees of the marriage settlement as part of the fund subject to that settlement. BEETHAM *v.* BELL, 24 N.Z.L.R. 573; 7 Gaz. L.R. 459. [*New Zealand.*]

Insurance policy—Transfer.—*See* INSURANCE. SMEATON *v.* MUTUAL LIFE ASSOCIATION OF AUSTRALASIA, 1904 S.A.L.R. 147. [*South Australia.*]

Sale of land.—An agreement in writing was entered into for the sale and purchase of land at a certain price per acre, the stock to be taken at a valuation, a certain sum being paid on execution of the agreement, and the balance of the purchase-money for land and stock to be paid on delivery. The agreement contained further provisions that possession and delivery should be given and taken on a certain date; that the sheep should be mustered and should be branded by the purchasers as delivered; that the purchase-money should be computed on the number actually delivered; and that a second muster should be made at crutching-time, and the extra stock, if any, paid for at the price per head fixed by the valuation previously made. *Held*, by the Court of Appeal (Denniston, Edwards and Chapman JJ.; Stout C.J. and Cooper J. dissenting), that this was not a sale of the land together with the live-stock thereon at the time of the sale within the meaning of sec. 18 of the Stamp Act, 1882, Amendment Act, 1885, and that stamp duty on the conveyance of the land was not therefore payable on the total purchase-money of both land and stock. *Godfrey* v. *The Commissioner of Stamps* (23 N.Z.L.R. 937; 6 Gaz. L.R. 430), overruled (*semble*). DOUGLAS *v.* THE COMMISSIONER OF STAMPS, 24 N.Z.L.R. 716; 7 Gaz. L.R. 188. [*New Zealand.*]

Transfer or conveyance of land.—The Rosehill Racecourse Company, in voluntary liquidation, transferred by a memo. of transfer under the R.P. Act certain land known as Rosehill Racecourse to a new company for £10,000. By a separate agreement, duly stamped as such, it was agreed that for 32,792 shares of £1 allotted to its members by the new company the old company should trans-

fer and the new company take over all the lands, buildings, goods, chattels, &c., of the old company, and the undertaking, business, and goodwill thereof and all its other property liabilities and contracts. The agreement contained a clause that for the purpose of apportioning stamp duty the lands, &c., not capable of transfer by manual delivery should be taken to be of the value of £10,000, and that it was to operate as an agreement only and not as a conveyance or transfer. The land was used as a racecourse under a license to hold races on certain specified days in the year granted to the company by the Australian Jockey Club, a privilege which was not attached to the land, but was the exclusive right of the company and might be exercised by them on any suitable course, and the Australian Jockey Club had consented to transfer to the new company the rights of the old company with respect to the license to hold race meetings. *Held*, that stamp duty on the transfer was payable on £32,792, and not merely on the £10,000 since the business and goodwill of the undertaking was inseparable from the ownership and use of the land as a racecourse, and passed by the transfer. *In re* ROSEHILL RACECOURSE COMPANY, 5 S.R. 402; 22 W.N. 118. [*New South Wales.*]

On annuity.—*See* ANNUITY. DOUGALL *v.* DOUGALL, 1905 V.L.R. 82; 26 A.L.T. 122. [*Victoria.*]

Discrimination. — *See* FEDERAL LAW. DAVIES *v.* THE STATE OF WESTERN AUSTRALIA, 2 C.L.R. 29; 11 A.L.R. 73. [*Western Australia.*]

Farmers' Co-operative Association.—A company, calling itself a farmers' co-operative distributing company, was not by its memorandum of association restricted to dealing in farm produce or things requisite for farmers *qua* farmers, or to carrying on farming operations; and it was possible under its articles of association that persons who were not farmers might be interested in shares in the company as members of other co-operative associations or companies. *Held*, that it could not be said to be formed exclusively for the purposes of a "farmers' co-operative association" within the meaning of the exemptions from an annual license fee contained in the Third Schedule to the Stamp Act, 1882, as amended by sec. 20 of the Stamp Act, 1882, Amendment Act, 1885. THE N.Z. FARMERS' CO-OPERATIVE DISTRIBUTING CO. *v.* THE COMMISSIONER OF STAMPS, 24 N.Z.L.R. 638; 7 Gaz. L.R. 117. [*New Zealand.*]

Incidence.—Devise to trustees, the wife to have the use and enjoyment of dwelling-house and surrounding lands, free from taxes, &c., and other outgoings. *Held*, that the duty was payable out of the general estate. *In re* BELL, 1905 Q.W.N. 70. [*Queensland.*]

Deduction from devise, &c.—Incidence of duty.—Where an estate is devised by will to trustees for A. for life and for B. in remainder, the executors' duty under sec. 103 of the Administration and Probate Act, 1890, is to deduct from the estate the proportionate part of the probate duty, so that a diminished property passes to the trustees to be enjoyed by A. and B. in succession, but no adjustment of rights between A. and B. has to be made by the trustees. A certain property was devised by will to trustees for the benefit of A. for life and after her death for her children, but it was directed that out of the property an annuity should be paid to B. for life, and that on his death the trustees should out of the property raise the sum of £10,000 for the benefit of the issue of B. The amount of the duty on the property was raised by a mortgage thereon. *Held*, that no deduction in respect of duty should be made either from the annuity to B. or from the £10,000; that interest on the sum raised by mortgage of the property to pay the duty should be kept down by A. during her life; and that the principal sum should remain a charge on the property to be paid by the persons entitled thereto on the death of A. *Held, also*, that a direction in the will that each property legacy or bequest devised or bequeathed should bear and satisfy a due proportion according to its value of the duty payable in respect of the testator's estate, did not alter the incidence of the duty. MURPHY *v.* AINSLIE, 1905 V.L.R. 350; 26 A.L.T. 202; 11 A.L.R. 163. [*Victoria.*]

Deductions—Future calls on shares.—The only deduction allowed by the Deceased Persons' Estates Duties Act, 1881, is the amount of debts due by a deceased person payable out of his personal property or secured on his real estate. Liability to pay future calls on shares is not a debt, and consequently the estimated amount required to indemnify the estate against such liability cannot be deducted as a debt. *In re estate of* SUTTER, 7 N.Z. Gaz. L.R. 10. [*New Zealand.*]

Will—For the benefit of the grandchildren.—A testator set apart a certain fund, and directed that his trustee should, subject to certain life interests therein previously created, stand possessed thereof upon trust for such of his grandchildren as being sons or a son should attain the age of twenty-one years, or being daughters or a daughter, should attain the age of twenty-one years or marry under that age, in equal shares, the issue of any such grandchild who might die in the testator's lifetime leaving issue to take between them equally *per stirpes* the share which their, his, or her parent would have taken had such parent survived the testator. The grandchildren all survived the testator, but some of them were minors at his death. *Held*, that the sum allowed off the duty payable under the Deceased Persons' Estates

Duties Act, 1881, under sec. 37 of that Act, "for the benefit of such grandchildren," remained part of the trust fund, and followed the devolution of the remainder of that trust fund, and must be dealt with by the trustees of the testators will accordingly. The testator gave the income of the residue of his estate to his wife during her life, and after the death of his wife he gave the capital thereof (subject to certain deductions) to a daughter, if she should survive his wife. The testator's wife survived him, but died about sixteen months afterwards, the daughter surviving her. A considerable sum was, under sec. 37 of the Deceased Persons' Estates Duties Act, 1881, allowed off the duty payable under that Act, on the ground that the residue went to a child of the testator. *Held*, that the daughter was not during the lifetime of the widow entitled to any payment in respect of the allowance so made, and that she was not entitled to any income in respect of such allowance for the period between the death of the testator and the death of his widow. BEETHAM *v.* LEVIN 24 N.Z.L.R. 577 ; 7 Gaz. L.R. 462. [*New Zealand.*]

Charitable Institution.—Bequest to certain persons for maintenance, &c., of orphan children, members of the Established High Church. *Held*, (1) that "includes" in sec. 2 of the Charitable Gifts Duties Exemption Act, 1883, is equivalent to "means and includes," and that sec. 2 contains an exhaustive definition of the classes of charitable dispositions exempted from duty by that Act. *In re Dilworth* (14 N.Z.L.R. (C.A.) 729) followed. (2) The orphans mentioned in the bequest did not constitute an "institution" within the meaning of sec. 2 of the said Act, or of sec. 3 of the Charitable Gifts Act, 1901. To constitute such an institution there must be some building in existence where the orphans are to be housed and maintained, or such a building must be in contemplation (3) The bequest was a "public charity." (4) That the ordinary presumption that the operation of a statute is confined to persons within the jurisdiction, applies to the Charitable Gifts Act, 1901, and the Charitable Gifts Duties Exemption Act, 1883. *In re* DECEASED PERSONS ESTATES DUTIES ACT, 1881, 8 N.Z. Gaz. L.R. 46. [*New Zealand.*]

Deceased Persons Estates Duties Act—Public House license—Goodwill—Property.—The value to the estate of a deceased person of the license of a public house and goodwill existing in connection therewith is "property" belonging to the deceased at the time of his death, and as such is dutiable under the Deceased Persons Estates Duties Acts. The license and the goodwill arising from it, are not land and cannot be included in the term real property, within sec. 5 (*d*) of the Act. *In the estate of* JOSEPH, 7 N.Z. Gaz. L.R. 643. [*New Zealand.*]

Succession duty—Land mortgaged for more than its value—Excess of debt—Apportionment—Conversion.—Where the deceased dies possessed of realty subject to a mortgage debt of an amount exceeding its value, no value should be attributed to his interest in the mortgaged land. The excess of the debt over the mortgage is to be considered as a debt to be deducted from the gross values of the properties in Queensland, and outside Queensland, in proportion to the respective values. The fact that the deceased by his will directed a conversion, does not alter the principle. *In re* WISEMAN, 1905 S.R. (Q.) 53 ; Q.W.N. 22. [*Queensland.*]

Certificate of value.—A certificate given under sec. 108 of the Administration and Probate Act, 1890, as to the value for duty of the estate of a deceased person, is, apart from fraud, final and conclusive as to all matters dealt with in such certificate, but not as to any matter not included in the statement for duty, or included in that statement but not dealt with by the certificate. *Held*, therefore, on a claim being made by the Crown under sec. 105, that by reason of certain property of the deceased not having been included in the statement for duty, too little duty had been paid, that such property should be valued and duty paid thereon, but that the personal representative of the deceased was not entitled to dispute the valuations of properties included in the statement for duty, and as to which a certificate under sec. 108 had been given. R. *v.* AFFLECK, 1905 V.L.R. 130 ; 26 A.L.T. 148 ; 11 A.L.R. 86. [*Victoria.*]

Real estate of intestates.—The succession duty payable on the real estate of a deceased person under the Stamp Duties Act, 1866, was a first charge on the land, and the persson accountable for its payment were the successors and those who derived title from them, and no duty or power in the matter was cast or conferred upon the administrator of the deceased. *In re* LAND TRANSFER ACT, 1885 ; *Ex parte* SMITH, 7 N.Z. Gaz. L.R. 567. [*New Zealand.*]

Native land duty—Trust for conversion.—William Jillett, who died on the 28th May, 1903, by his will gave his real and personal estate to his trustees, his wife and son, upon trust to convert the same, and out of the proceeds to pay his debts, funeral and testamentary expenses, to invest the residue, and to pay the income of the trust estate to his widow during her widowhood, and after the death or second marriage of his widow to divide the trust estate between his son and daughter, and if either of them should during the lifetime or widowhood of the testator's widow die without issue, then to pay the whole to the survivor, but otherwise as to the share of the testator's son or daughter so dying in trust for his or her children. The

trustees were also appointed executors. Jillett was a half-caste, his father being a European, and his mother a Maori. His wife, Mary Jane Jillett, was a European. His children mentioned in his will were his children by the said Mary Jane Jillett. Part of the land devised was native land within the meaning of sec. 16 of the Stamp Act, 1882, Amendment Act, 1885, and the question was whether duty was payable under sec. 17 of the said Act by the executors in respect of the said native land. *Held*, that a devise to be chargeable with native land duty under sec. 17 of the Stamp Act, 1882, Amendment Act, 1885, must be a devise in fee of the beneficial interest in the land; that in this case, by reason of the trust for conversion, the land was in contemplation of law personalty; that the beneficiaries were not entitled to call for, and had not obtained a conveyance of the said land, and that no duty was payayle under sec. 17 aforesaid. *Held, further*, that if under the trust for conversion the trustees sold the native land to a person not a native, the duty imposed by sec. 17 aforesaid would become payable but for the provisions of the Native Land Duty Abolition Act, 1904. JILLETT *v.* COMMISSIONER OF STAMPS; COMMISSIONER OF STAMPS *v.* JILLETT, 7 N.Z. Gaz. L.R. 256, 522. [*New Zealand.*]

Intent to defraud.—The applicant was convicted of an offence under sec. 10 of the Stamp Duties Act. The magistrate held that he could not consider whether there was an intent to defraud or not. *Held*, that to sustain the charge an intent to defraud must be proved. *Ex parte* WARK, 22 W.N. 10. [*New South Wales.*]

Time within which complaint to be laid.—D. was charged with and convicted of having signed an instrument of conveyance which was liable by law to stamp duty before the said instrument was fully stamped for denoting the payment of duty contrary to the Stamp Act, 1894, sec. 26. *Held*, that sec. 77 limited the time for taking proceedings to the sixty days next after the time when the complainant first becomes aware of the facts of the particular case, and that the time commences to run as soon as the complainant becomes aware of the facts, and the contents of the document. The time when he becomes aware that the document is in law a conveyance and not, what it purports to be, a receipt, is immaterial. O'BRIEN *v.* DOUGLAS; *Ex parte* DOUGLAS, 1905 S.R. (Q.) 142; Q.W.N. 54. [*Queensland.*]

Nonsuit—Unstamped agreement.—Where an agreement, which was the foundation of the appellant's case, was not stamped according to the provisions of sec. 50 of the Stamp Act, 1882, the magistrate was justified in nonsuiting the appellant notwithstanding the objection was waived by the respondent. ROBSON *v.* MCWILLIAM, 24 N.Z.L.R. 694; 7 Gaz. L.R. 589. [*New Zealand.*]

Costs.—*See* COSTS. ROBERTSON *v.* COMMISSIONER OF STAMP DUTIES. 22 W.N. 200. [*New South Wales.*]

STATE COAL MINE.

Industrial Arbitration—Powers of Court.—In sec. 18 of the State Coal Mines Act, 1901, what the Legislature had in view was a general award for the district, and having that in view it simply nullified the prohibitory provisions of the Industrial Conciliation and Arbitration Act, 1900 sec. 118, and declared that awards should bind the Crown in relation to State Coal Mines. In so enacting, however, the Legislature has not restricted the operation of the section to general awards affecting the district, but has left to the Court the power which it already possessed of restricting the operation of its award to a part of the district, or the particular parties. It was not the intention of the Legislature to bind the management of the State Coal Mine without giving it a hearing. *In re* STATE COAL MINES ACT, 1901, 7 N.Z. Gaz. L.R. 434. [*New Zealand.*]

STATUTE.

Construction—Commonwealth statutes.—In construing Commonwealth Acts, the decisions of sister States should be followed. MANN *v.* AH ON, 7 W.A.L.R. 182. [*Western Australia.*]

—— **Consolidated Acts.**—When the words in a consolidated statute are clear and not ambiguous, the Court will give them their ordinary grammatical meaning without considering the law in existence when the Consolidated Act was passed. MARTIN *v.* FERRIS, 5 S.R. 287; 22 W.N. 52, 90; but *see* this case on appeal, 2 C.L.R. 525; 11 A.L.R. 470. [*New South Wales.*]

—— **Practice of profession.**—The question discussed, how far a practice which has established itself in the profession, in carrying out the provisions of a statute, may be taken into account in construing the statute, and whether re-enactment of the statutory provisions from time to time, after the establishment of the practice, without any further provision abrogating or modifying the practice, may be regarded as confirmation of the practice by the Legislature. The principle suggested by Lord Macnaghten in *The Commissioners for Special Purposes of Income tax* v. *Pemsel* ([1891]) A.C. 531, at pp. 590, 591), considered. HAMILTON *v.* BANK OF NEW

ZEALAND AND ANOTHER, 24 N.Z. L.R. 109; 7 Gaz. L.R. 277. [*New Zealand.*]

—— **Retrospection.**—*See* CROWN LANDS. EWING *v.* SCANDINAVIAN WATER-RACE CO., 24 N.Z.L.R. 271; 7 Gaz. L.R. 48. [*New Zealand.*]

—— **Headings to sections.**—Remarks as to the general framework of Acts of Parliament; and the effect upon interpretation of headings to sections considered. NAPIER *v.* SHOLL, 1904 S.A.L.R. 73. [*South Australia.*]

—— **Imperative and directory.**—*See* LOCAL GOVERNMENT. *In re* CHURCH'S CAVEAT, 1905 S.R. (Q.) 201; Q.W.N. 67. [*Queensland.*]

—— **General and special provisions.**—*Barker* v. *Edger* ([1898] A.C. 748), followed. *In re* THE PAINTERS' AWARD, 1905 A.R. 33. [*New South Wales.*]

—— **Ejusdem generis.**—*See* MACDONALD *v.* CARTER, 1905 V.L.R. 181; URU *v.* TE RANGI, 24 N.Z.L.R. 390; 7 Gaz. L.R. 16; O'BRIEN *v.* COMMISSIONER FOR RAILWAYS, 7 W.A.L.R. 119. [*Victoria.*]

—— **Implied grant of support.** — *See* SUPPORT.

Statute passed subsequent to agreement making agreement illegal.—*See* TAXATION. HARRIS *v.* SYDNEY GLASS & TILE CO., 2 C.L.R. 227; 4 S.R. 454; 11 A.L.R. 49. [*New South Wales.*]

Operation outside jurisdiction.—*See* STAMP DUTIES. *In re* DECEASED PERSON ESTATES DUTIES ACT, 1881, 8 N.Z. Gaz. L.R. 46.

Remedies for breach—Penalty—Injunction.—The fact that by sec. 46 of the Electric Light and Power Act, 1896, a penalty is imposed for breach of the provisions of the Act, does not deprive an aggrieved person of all remedy for such breach. The Attorney-General may obtain an injunction to prevent the breach of a statutory duty where the matter is one of public interest notwithstanding the statute is local in its application. *Held*, therefore, that the Attorney-General might obtain an injunction to restrain a breach of sec. 39 of the Electric Light and Power Act, 1896. ATTORNEY-GENERAL *v.* MAYOR, &c., OF THE CITY OF MELBOURNE, 27 A.L.T. 116; 11 A.L.R. 504. [*Victoria.*]

Who may lay information for breach.—*See* JUSTICES.

Sunday.—The Act 21 Geo. III. c. 49, is in force in Victoria CAWSEY *v.* DAVIDSON, 27 A.L.T. 121; 11 A.L.R. 446. [*Victoria.*]

Imperial Acts—Constitution Act (N.S.W.).—In considering whether an Imperial Act passed after the settlement of the colony of New South Wales, and before 9 Geo. IV. c. 83, can be "applied in the administration of justice" in New South Wales within the meaning of sec. 24 of the latter Act, the test is whether the provisions of the Act under consideration were suitable to the conditions of the colony, and capable of being reasonably applied there, when the 9 Geo. IV. c. 83 was passed. *Mitchell* v. *Ah King* (21 N.S.W.L.R. 64), and *dictum* in *Anderson* v. *Ah Nam* ([1904] 4 S.R. (N.S.W.) 492), overruled. *Attorney-General* v. *Edgley* (9 N.S.W.L.R. 157) approved. Decision of Pring J. (2nd December, 1904) reversed. QUAN YICK *v.* HINDS, 2 C.L.R. 345; 11 A.L.R. 223. [*New South Wales.*]

4 Geo. IV. c. 60, and 5 Geo. IV. c. 83, not in force—Lotteries.—The Imperial Acts, 4 Geo. IV. c. 60, which, *inter alia*, makes it an offence to sell tickets in a lottery not authorized by that or some other Act of Parliament, and 5 Geo. IV. c. 83, so far as they relate to proceedings before justices, are not in force in New South Wales. QUAN YICK *v.* HINDS, 2 C.L.R. 345; 11 A.L.R. 223. [*New South Wales.*]

Enforcement of statutory rights—Decision of special tribunal—Estoppel.—An Act imposed a tax and created a special tribunal to determine, on appeal, whether persons were or were not liable to the tax. *Held*, that a party who claimed to be exempt, but did not invoke the decision of the special tribunal, was precluded from afterwards raising the question of his liability in an action at law. COMMISSIONERS OF TAXATION *v.* MOONEY, 5 S.R. 244; 22 W.N. 71. (*New South Wales.*]

Burden of proof that a substance is among those excepted by a statute.—*See* MELBOURNE HARBOUR TRUST.

STOCK.

Travelling sheep—Who may prosecute.—Any person may prosecute for an offence under sec. 74 of the Stock Diseases Act, 1890, and sec. 99, which gives the inspector power to recover money made payable by the owner does not exclude this right. LIZARS *v.* SABELBERG, 1905 V.L.R. 608. [*Victoria.*]

STOCK EXCHANGE

Rules of as affecting contract of sale.—*See* SALE OF GOODS. MCCLAY *v.* SEELIGSON, 7 W.A.L.R. 87. [*Western Australia.*]

SUCCESSION DUTY.

See STAMP DUTY.

SUNDAY.

Place for public entertainment—Person managing entertainment.—The Act 21 Geo. III. c. 49, is in force in Victoria. *McHugh* v. *Robertson* (6 A.L.T. 227; 11 V.L.R. 410), followed. A public entertainment within the meaning of the above Act was given in a building on a Sunday. The public were admitted into the building without payment of money, but a part of the building was railed off and a charge was made for admission to it. *Semble*, that the part so railed off was a place used for public entertainment to which persons were admitted by the payment of money. *Williams* v. *Wright* (13 T.L.R. 551) not followed. *Held*, that a person who stood at the entrance to the part so railed off, collected tickets, received payment for admission and directed persons to seats, was not a person managing or conducting the entertainment. CAWSEY *v.* DAVIDSON, 27 A.L.T. 121; 11 A.L.R. 446. [*Victoria.*]

Service of writ on.—*See* PRACTICE.

SUPPORT.

Lease of minerals.—When a proprietor of the surface and the subjacent strata grants a lease of the whole or part of his minerals to a tenant, it is an implied term of that contract that support shall be given, in the course of working, to the surface of the land. If it is not intended that that right should be reserved the parties must express their intention so clearly as to enable a Court to say that such intention is plain. *Davis* v. *Trehearne* (6 A.C. 460) followed. BLACKBALL COAL CO., LTD., *v.* SHRIVES AND OTHERS, 7 N.Z. Gaz. L.R. 35. [*New Zealand.*]

Implied grant—Water race.—Where an express statutory right is given to make and maintain a thing necessarily requiring support, the statute, in the absence of a context implying the contrary, must be taken to mean that the right to necessary support of the thing constructed shall accompany the right to make and to maintain it; the Crown, therefore, in giving, by virtue of the Mining Acts, a license to make and to maintain a water race, gives, assuming it has the right itself, the right to have the race supported by the adjacent strata. BLACKBALL COAL CO., LTD., *v.* SHRIVES AND OTHERS, 7 N.Z. Gaz. L.R. 35. [*New Zealand.*]

SUPREME COURT.

Jurisdiction—Presumption of.—Nothing will be intended to be out of the jurisdiction of the Supreme Court, as being a superior Court, but that which specially appears to be so. HENDERSON *v.* WANGAPEKA GOLD DREDGING CO., LTD., 7 N.Z. Gaz. L.R. 33. [*New Zealand.*]

—— **Lease of infant's land.**—*See* SETTLED LAND. *In re* RATHBONE, 8 N.Z. Gaz. L.R. 1. [*New Zealand.*]

—— **Of Supreme Court of Victoria to try action for infringement of N.S.W. patent.**—*See* PATENT. POTTER *v.* BROKEN HILL PROPRIETARY CO., 1905 V.L.R. 612; 27 A.L.T. 74; 11 A.L.R. 357. [*Victoria.*]

SYDNEY CORPORATION.

Alderman "interested in" contract.—An alderman is not "interested in" a contract within the meaning of sec. 24 of the Sydney Corporation Act, 1902, unless he is shown to have a pecuniary benefit or interest in the contract itself. The supply of goods by an alderman to a contractor with the council to be used upon a running contract is not prohibited by that section. NORTON *v.* TAYLOR, 2 C.L.R. 291; 22 W.N. 36. [*New South Wales.*]

Rates—Land used for public recreation.—Under sec. 4 of 1902 No. 45, the respondents occupied and used certain lands "for the purpose of holding shows and exhibitions . . . . . and for such other purposes as the Minister may sanction . . . ." *Held*, that these lands were vested in trustees for the purposes of public recreation, &c.; that the user of the lands in contravention of the trust did not of itself make the lands cease to be so vested, and they were therefore not rateable property within the meaning of the Sydney Corporation Act, 1902. *Held, further*, that the fact that the public were charged for admission did not disentitle the society to the exemption from rates. MUNICIPAL COUNCIL OF SYDNEY *v.* ROYAL AGRICULTURAL SOCIETY OF N.S.W., 22 W.N. 164. [*New South Wales.*]

Fees and charges—Cattle.—The Municipal Council of Sydney has no power to impose fees or charges upon cattle intended for slaughter yarded in yards not licensed or owned by the council in the city of Sydney, or within 14 miles thereof. MUNICIPAL COUNCIL OF SYDNEY *v.* AUSTRAL FREEZING CO., 22 W.N. 210. [*New South Wales.*]

TAXATION.

INCOME TAX—Profits derived from New Zealand.—Land used for business—The defendant company had its registered and head office in Melbourne. It owned extensive kauri forests in New Zealand, and had many timber-mills and timber depots in New Zealand. It carried on business in Victoria, New South Wales, and elsewhere, and in New Zealand. Its principal business in New Zealand was the conversion of its timber-trees into timber, partly in bulk, partly in flitches and boards of various dimensions. A large part of the timber, in this condition, was exported by the company from New Zealand to Sydney, where parts of it were cut up into smaller dimensions. Part of the timber so exported was sold, either in bulk or after being so cut up, in Australia and England; part was manufactured in Sydney into doors, sashes, and other articles, and was then sold in its manufactured condition. The purchase-moneys were received by the company in Melbourne. Other portions of the timber were sold in New Zealand. Sec. 51 of the Land and Income Assessment Act, 1900, provides that, where the taxpayer is a company, its income derived from business shall be deemed to include all profits derived from or received in New Zealand from such business in each year. Sec. 59 provides that income "derived from business" includes the profits derived from or received in New Zealand by any taxpayer, in or out of New Zealand, from, amongst other sources, the cutting, treatment, and sale of timber or flax by any person, whether the owner of the land or not. *Held*, that the company was not liable to income-tax in New Zealand upon the whole of the profits made by it upon timber exported by it from New Zealand and sold elsewhere (whether or not after further cutting or manufacture outside of New Zealand), but was liable only upon that part of the profit which was derived by it from the business carried on by it in New Zealand; and that this profit must be ascertained (in the case of timber exported from New Zealand) by estimating the value of the timber at the time of its being exported, and deducting therefrom the market value thereof when in its natural or unmanufactured state (under the proviso to sub-sec. 7 of sec. 59), and such cost of felling, transporting, and converting the same into the state or condition in which it was at the time of its export as was allowable by law. The company held in New Zealand (a) office and warehouse sites, mill-sites, timber-yards, and depots in various districts; (b) forest lands, from which it was cutting timber; and (c) forest lands from which it was not at the time cutting timber. *Held, per* Williams, Denniston, Edwards, and Cooper JJ.: That the company could not be said to be occupying and actually using, for the sole purposes of its business (within the meaning of sec. 68 of the above Act), any part of its forest lands, whether (b) or (c), and was entitled to the deduction of five per cent. on the capital value, under sec. 68, only in respect of its business premises, under (a). *Per* Stout C.J.: The company was entitled to the deduction on any part of its forest lands used continuously in the process of cutting and storing the timber. THE COMMISSIONER OF TAXES *v.* THE KAURI TIMBER CO., LTD., 24 N.Z.L.R. 18. [*New Zealand.*]

—— **Cable company.**—The appellant company owned a cable from New Zealand to La Perouse, near Sydney, and another from Port Darwin to Madras, and during the period in question in the action all telegraphic messages from New Zealand to parts of the world other than Australia had to pass over both these cables. The practice in regard to charges for such telegrams was that the total charge of 5s. 2d. per word was received by the New Zealand Government Telegraphic Department at the telegraph-office (of that department) at which the message was handed in. The New Zealand Government deducted its own charge of 1d. per word for transmission over its own lines to the appellant company's office at the New Zealand terminus of its cable, paid to the appellant company in New Zealand their charge of 3d. per word for transmission by their cable to Australia, and handed over the balance to the Government of New South Wales. The Government of New South Wales deducted from this its own transit rates, and handed over the balance to the Government of South Australia, which in turn deducted its own transit rates, and handed over the balance to the appellant company in Australia. Out of this balance the appellant company retained its charges for transmission by its cable from Port Darwin to Madras. *Held*, by the Court of Appeal, that the profits made by the appellant company upon the transmission of such messages from Port Darwin to Madras were not profits derived from New Zealand or from the appellant company's business in New Zealand within the meaning of secs. 51 and 59 of the Land and Income Assessment Act, 1900, and did not therefore form part of the income of the appellant company taxable in New Zealand under that Act. *Erichsen* v. *Last* (1 Rep. of Tax Cases 351; 7 Q.B.D. 12; 8 Q.B.D. 414), distinguished. THE EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH CO., LTD. *v.* THE COMMISSIONER OF TAXES, 24 N.Z.L.R. 308; 7 Gaz. L.R. 123. [*New Zealand.*]

—— **Business carried on in Queensland—Pearl-shelling outside territorial waters.**—A firm registered under the Registration of Firms Act, 1902, collected pearl shell and prepared it for market in waters more than

three miles from the Queensland coast, the whole of it being sold outside Queensland. The returns from the shell were remitted to Queensland and banked there to the firm's account. The firm and its ships, gear, &c., were licensed under the Queensland Pearl-Shell and Beche-de-mer Fisheries Act, and the shell was always submitted to an inspector. *Held*, that the proceeds were not income consisting of earnings derived from Queensland, or arising or accruing from a business carried on in Queensland within the meaning of the Income Tax Act, 1902 sec. 3, and therefore not liable to income tax. *In re* THE INCOME TAX ACT, 1902, 1905 S.R. (Q.) 1; Q.W.N. 6. [*Queensland.*]

—— **Increase of sheep and cattle.**—Sec. 3 (1) of the Income Tax Act, 1902, defines income in terms relating to money or to the equivalents of money, and therefore, the increase of sheep and cattle which are not sold are not income or liable to taxation on value, *In re* THE INCOME TAX ACT, 1902 (No. 2). 1905 S.R. (Q.) 8; Q.W.N. 7. [*Queensland.*]

—— **Grazier—Value of cattle purchased but not sold.**—The value of cattle purchased by a grazier in the course of his business, but not sold, should be added to his stock account. *In re* THE INCOME TAX ACT, 1902 (No. 3), 1905 S.R. (Q.) 61; Q.W.N. 13; 2 C.L.L.R. 185. [*Queensland.*]

—— **Deduction—Cost price of cattle purchased and sold.**—The cost price of cattle purchased and sold by a grazier during the year in the course of his business should be allowed as a deduction from income. *In re* THE INCOME TAX ACT, 1902 (No. 3), 1905 S.R. (Q.) 61; Q.W.N. 13; 2 C.L.L.R. 185. [*Queensland.*]

—— **Deduction—Machinery.** — The word "machinery" in sec. 2 (a) of the Income Tax Act, 1895, and in sec. 6 of the Income Tax Act, 1896, includes machinery attached to the soil as well as machinery not so attached. The following articles forming part of the plant used for supplying water power, are machinery within such sections, viz.:—Engines, pumps and accumulator; auxiliary machines, tanks and pipes; boilers; boiler seatings; water mains laid in the streets through which the power is supplied to consumers. A company is entitled to a deduction in respect of actual wear and tear of machinery, notwithstanding that in its published balance sheets no provision is made for such wear and tear, but the fact of no such provisions being made is evidence upon which the Commissioner may act in determining, under sec. 6 of the Income Tax Act, 1896, what is a just and reasonable sum to allow for such wear and tear. *In re* INCOME TAX ACTS, 1905 V.L.R. 185; 26 A.L.T. 177; 11 A.L.R. 65. [*Victoria.*]

—— **Deduction for repairs.**—Sub-sec. 1 of sec. 66 of the above Act provides that in ascertaining the income derived from business no deduction shall be made in respect of repairs beyond the sum usually expended in any year for such purposes, provided that in cases where depreciation cannot be made good by repairs, the Commissioner may allow such deduction as he deems just. *Held*, by Cooper J., in the Supreme Court (the point not being further contested in the Courtof Appeal):—(1) That the allowance of such a deduction for depreciation was a matter entirely within the discretion of the Commissioner, and that the Supreme Court could not review its decision. (2) That, assuming the matter to be one which the Supreme Court could deal with, an allowance of five per cent. on their value for steady depreciation of the appellant company's cables, beyond expenditure for repairs was not a deductible item, being in the nature of capital. *Forder* v. *Handyside & Co., Ltd.* (45 L.J. Ex. 809), followed. THE EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH CO., LTD. *v.* THE COMMISSIONER OF TAXES, 24 N.Z.L.R. 308; 7 Gaz. L.R. 123. [*New Zealand.*]

—— **Business carried on by trustee—Separate assessment of beneficiaries.**—*Semble*, that where a trustee is carrying on business on behalf of beneficiaries, income tax should be assessed separately on the share of each beneficiary in the income, and exemptions allowed accordingly. RATHBONE *v.* PUBLIC TRUSTEE, 24 N.Z.L.R. 801. [*New Zealand.*]

—— **Returns — Default assessment.** — On failure of any person to make a return, the Commissioners may either appoint a person to make a return under sec. 30 (4), or they may themselves make a default assessment under sec. 39. COMMISSIONERS OF TAXATION *v.* MOONEY, 5 S.R. 244; 22 W.N. 71. [*New South Wales.*]

The defendant refused to send in a return of his income, contending that he had no taxable income. The Commissioners made a default assessment under sec. 39, and sued to recover the tax. *Held*, that not having appealed from such assessment to the Court of Review upon the question of his liability to pay income tax, the defendant was precluded from disputing his liability in the action. COMMISSIONERS OF TAXATION *v.* MOONEY, 5 S.R. 244; 22 W.N. 71. [*New South Wales.*]

—— **Production of returns.**—In a suit brought to establish that the plaintiffs were partners in a certain firm, the Commissioners of Taxation were subpœnaed to produce the income tax returns made on behalf of the firm. All persons claiming to be beneficially interested in the firm consented to their production, but the Chief Commissioner objected to produce the returns, stating on oath that in his opinion their production would be

prejudicial to the public interest. *Held*, that the returns were not privileged from production. *Wilkinson* v. *Wilkinson* (1 S.R. Eq. 285) distinguished. McLeod *v.* Phillips, 5 S.R. 503; 22 W.N. 163. [*New South Wales.*]

—— **Assessment book—Particulars of default assessment.**—In the case of a default assessment under sec. 39, the assessment book need only show the amount of income on which, in the Commissioners' judgment, tax ought to be charged and the amount of tax imposed. Commissioners of Taxation *v.* Mooney, 5 S.R. 244; 22 W.N. 71. [*New South Wales.*]

LAND TAX—Landed estate.—Under the Land Tax Act, 1890 (No. 1107), sec. 3, whenever land above 640 acres in extent and £2500 in value belongs to one owner, and whether in one connected area or in several areas, none of which are further apart than five miles, the whole is to be valued and classified as one "landed estate." And that rule applies where some of such areas consist of purchased remnants of former "landed estates," which remnants have, to that time, remained declassified within the principle of *The Queen* v. *Gidney* (21 A.L.T. 57; 25 A.L.R. 220; 25 V.L.R. 81). Observations as to the recovery of money paid under mistake of law. *Kelly* v. *The King* (23 A.L.T. 214; 27 V.L.R. 522), followed. R. *v.* Atkinson, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412. [*Victoria.*]

Portion of a landed estate of which A. was the owner was sold, such portion not being of sufficient area to constitute a landed estate, and the name of A. was removed from the Land Tax Register in respect of such portion. The balance of the landed estate was subsequently sold to B. *Held*, that B. was not liable to land tax until such balance was re-valued and re-classified. *The Queen* v. *Gidney* (21 A.L.T. 57; 25 V.L.R. 81) followed. The owner of a landed estate who alienates a portion of it, but retains a sufficient area to constitute a landed estate, is liable to pay land tax in respect of the portion still retained by him, although there has been no separate valuation and classification of such portion. A person who within three months after the 28th August in any particular year becomes the owner of a landed estate upon the land tax register is liable for land tax in respect of the half-year beginning on that date. *The King* v. *Palmer* (26 A.L.T. 85; [1905] V.L.R. 30), approved. *Per* Madden C.J.: If an owner of a landed estate alienates a portion of it, he cannot obtain a re-valuation of the balance remaining in his possession. *Per* a'Beckett J.: If an owner of a landed estate having alienated a portion of it, demands a re-classification of what is left, the Crown is not entitled to refuse such demand, and insist on payment at the old rate on the diminished area. R. *v.* Chirnside, 1905 V.L.R. 522; 27 A.L.T. 52; 11 A.L.R. 252. [*Victoria.*]

P. was, during the whole of the year commencing on the 28th August, 1902, the owner of certain land of sufficient area and value to constitute a landed estate within the meaning of the Land Tax Act, 1890. Such land was classified for the first time under the Act on the 22nd January, 1903, and such classification was first published in the Government *Gazette* on the 28th January, 1903. *Held*, that P. was not liable to pay land tax on such estate for the half year commencing on 28th August, 1902. *Quære*, whether P. was liable to pay land tax for the half year commencing on the 28th February, 1903. *Reg.* v. *The Buckley Swamp Estate Co.* (18 V.L.R. 657; 14 A.L.T. 140), distinguished. R. *v.* Palmer, 11 A.L.R. 39. [*Victoria.*]

—— **Landlord and tenant—Incidence of taxation.**—The lease contained a covenant by the lessee to pay "such further sums as rent as shall represent one-third of the annual sum payable . . . . from time to time during the said term by the said lessor . . . . as land tax to the Commissioners of Taxation under the Land and Income Tax Assessment Act, 1895, or any amendment thereof in respect of the land demised." Subsequently to the execution of the lease, the Land Tax (Leases) Act, 1902, was passed. *Held*, that the covenant was void. *Per* Griffith C.J. and Barton J.: The intention of the parties as disclosed by the lease, was that the stipulation in the covenant should be in substitution for the statutory provision then in force, and for any statutory provision that might thereafter be made in place of it, and was therefore void under the Land and Income Assessment Act, 1895, and inoperative under the Land Tax (Leases) Act, 1902; and further, that, even if the parties intended it to be cumulative, it was void under the Land and Income Tax Assessment Act, 1895, and that the original quality of sterility imposed by that upon the stipulation when it was made still attached to it. *Per* O'Connor J.: The stipulation, being a violation of the provisions of sec. 63 of the Land and Income Assessment Act, 1895, was void from its inception, and, therefore, whatever the effect of the stipulation might have been, if it had been made after the passing of the Land Tax (Leases) Act, 1902, it could not be made effectual for the purpose of making good the claim for rent alleged to have accrued due under it after the commencement of the latter Act. Harris *v.* Sydney Glass and Tile Co., 2 C.L.R. 227; 4 S.R. 454; 11 A.L.R. 49. [*New South Wales.*]

—— **Improvements.**—The Land Tax imposed by the Taxation Act, 1884, is a tax on the unimproved value of land. Improvements are not taxable property under the Act. Sec. 23, as interpreted by the Regulations under the Act, relates only to the unimproved

value of the land; and that section, in conjunction with sec. 22 and 25, and the Rules, gives statutory effect to the proposition that, as the interest of the owner of the fee simple in the unimproved value is to the lessee's interest in the unimproved value so is the burden of the land tax distributable. If, therefore, the lessee, has no interest in the unimproved value, he is not liable to contribute towards land tax paid by the owner of the fee simple. TUCKER *v.* HOWARD SMITH CO., LTD., 1904 S.A.L.R. 165. [*South Australia.*]

PROHIBITION to Commissioners.—*See* PROHIBITION. *Ex parte* DANSEY, 22 W.N. 51. [*New South Wales.*]

TELEGRAPH.

Contract with sender—Contract with Government.—The Court of Appeal considered that, upon a view of the International Telegraph Convention of St. Petersburg of 1875, of certain agreements to which the New Zealand Government and the appellant company had been parties, but which had been allowed to lapse, and of the practice established under the convention and those agreements and continued after the lapse of the agreements, there was no contract entered into by the appellant company in New Zealand, either with the New Zealand Government or with the sender of a message, for the transmission of the message by its cable from Port Darwin to Madras. THE EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LTD. *v.* THE COMMISSIONER, OF TAXES, 24 N.Z.L.R. 308; 7 Gaz. L.R. 123. [*New Zealand.*]

Telegram as evidence.—*See* CRIMINAL LAW. R. *v.* LAWRENCE, 7 N.Z. Gaz. L.R. 559. [*New Zealand.*]

Tender by telegram.—*See* JUDGMENT. OSBORNE *v.* ANDERSON, 1905 V.L.R. 427; 26 A.L.T. 225; 11 A.L.R. 239. [*Victoria.*]

Application by telegram to state case.—*See* JUSTICES. FOUNTAIN *v.* MCDONNELL, 7 N.Z. Gaz. L.R. 14. [*New Zealand.*]

TENANT IN COMMON.

See ESTATE. *In re* YOUNG, 4 S.R. 743; 21 W.N. 257; BRICKWOOD *v.* YOUNG, 2 C.L.R. 387; 11 A.L.R. 154. [*New South Wales.*]

TENANT PUR AUTER VIE.

See ESTATE. *In re* YOUNG; BRICKWOOD *v.* YOUNG, 2 C.L.R. 387; 4 S.R. 743; 21 W.N. 257; 11 A.L.R. 154. [*New South Wales.*]

TENANT AT WILL.

See REAL PROPERTY.

TENDER.

By telegraph.—*See* JUDGMENT. OSBORNE *v.* ANDERSON, 1905 V.L.R. 427; 26 A.L.T. 225; 11 A.L.R. 239. [*Victoria.*]

Of mortgage debt.—*See* MORTGAGE.

Plea of tender.—*See* PLEADING.

TESTATOR'S FAMILY MAINTENANCE.

Increase provision.—An increased annual provision for a daughter of the testator ordered by the Court, under the Testator's Family Maintenance Act, 1900, she being fifty-six years of age and unable, owing to disease, to do anything to support herself, and the testator having left the bulk of his property to a son without having made adequate (though he had made some) provision for the daughter. WILKINSON *v.* WILKINSON, 24 N.Z.L.R. 156; 7 Gaz. L.R. 7. [*New Zealand.*]

Provision for family—Incidence.—Where provision under the Testator's Family Maintenance Act, 1900, for the testator's family, must necessarily be made out of legacies, such provision comes primarily out of the gift of residue, and if that is insufficient, then out of the particular legacies ratably. PARKER *v.* CARR, 7 N.Z. Gaz. L.R. 466. [*New Zealand.*]

TIMBER.

Removing.—*See* PUBLIC WORKS.

TORT.

Jurisdiction—Tort committed abroad.—*See* PATENT.—POTTER *v.* BROKEN HILL PROPRIETARY CO., 1905 V.L.R. 612; 27 A.L.T. 74; 11 A.L.R. 357. [*Victoria.*]

TRACTION ENGINE.

See MUNICIPALITY.

TRADE.

Passing off.—*See* PASSING OFF.

TRADE MARK.

Assignment apart from goodwill.—*See* PARTNERSHIP. BELL *v.* CULLING, 24 N.Z.L.R. 501; 7 Gaz. L.R. 165. [*New Zealand.*]
And *see* PASSING OFF.

TRADE UNION.

Conspiracy to coerce employer—Liability of funds of union.—Where the officials of a trade union threatened an employer that unless the plaintiff, an employee, were discharged no member of the union would be allowed to work for the employer, *held*, that the plaintiff was entitled to a verdict against the union. HEGGIE *v.* BRISBANE SHIPWRIGHTS' PROVIDENT UNION, 1905 S.R. (Q.) 155; Q.W.N. 62. [*Queensland.*]

TRAFFIC.

See MUNICIPALITY—VEHICLE.

TRANSFER OF LAND.

See LAND TRANSFER.

TRAVELLING STOCK.

See SHEEP.

TRESPASS.

1901 No. 33, secs. 4, 9—Charge of unlawful entry—Notice of action.—Accused was charged under sec. 4 with having trespassed on enclosed lands. The magistrate dismissed the case on the ground that the notice reequired by sec. 9 had not been given. *Held*, that sec. 9 does not apply to a charge under sec. 4. *Ex parte* REED, 5 S.R. 328; 22 W.N. 78. [*New South Wales.*]

Action for mesne profits—Limitation of actions for trespass Act (47 Vic. No. 7), sec. 2.—The Limitation of Actions for Trespass Act does not apply to an action for mesne profits. GOLDSBROUGH, MORT & Co. *v.* BOWTELL, 5 S.R. 461; 22 W.N. 129. [*New South Wales.*]

By overhanging pipes.—*See* INJUNCTION, NUISANCE. LAWLOR *v.* JOHNSTON, 1905 V.L.R. 714. [*Victoria.*]

By cattle.—*See* CATTLE TRESPASS. BRYDON *v.* MURRAY, 7 W.A.L.R. 186. [*Western Australia.*]

TRUST AND TRUSTEE.

CREATION OF TRUSTS—Gift—Resulting trust—Subscription to projected company. Money was subscribed by certain persons in Wilcannia in the form of deposits on applications for shares, at the rate of 1s. per share, in a proposed company, whose object was the locking of the River Darling. The greater part of this money having been expended by the provisional directors of the proposed company on preliminary expenses in respect of surveys and other matters with a view to the formation of the company, and a special Act of Parliament being considered necessary, the directors sought to obtain in Adelaide subscriptions towards the objects of the company, and especially towards obtaining the special Act. At a meeting at Adelaide a committee was formed "to assist the projects of the Wilcannia merchants," and the committee resolved that C., the honorary secretary of the proposed company, should "canvass for subscriptions towards the amount required to obtain the special Act." The chairman of the committee thereupon signed a document stating that at a meeting of the committee C. "was deputed to canvass the city for subscriptions to further the objects of the company." C. then collected subscriptions from certain Adelaide merchants who were financially interested in the locking of the River Darling, and who signed their names to the document above-mentioned, the amounts of their subscriptions being set opposite their signatures. The subscribers were offered the option of having their subscriptions applied as deposit money upon application for shares in the company, but most of them refused to accept the option. The money so collected was paid by C. into a

bank to the credit of the proposed company, and the committee in Adelaide was informed of this fact and offered no objection. The formation of the company afterwards fell through and was abandoned, and the moneys subscribed in Adelaide remained in the bank for about seventeen years. *Held*, that the money subscribed in Adelaide was a voluntary subvention towards a project in which the subscribers and the receivers had a common interest, but as to which the subscribers declined to incur any future responsibility, and was therefore a gift to the original subscribers in Wilcannia from which neither a trust for, nor a contract to repay the money to, the Adelaide subscribers could be inferred. Decision of the Full Court reversed. Where money is subscribed to a projected company on the terms that the subscriber shall have the option to have his subscription applied as payment on application for shares, that option constitutes a valuable consideration for the payment of the money so as to rebut the implication of a resulting trust for the subscriber. *Rothschild* v. *Hennings* (9 B. & C. 470) followed. LUKE *v.* WAITE, 2 C.L.R. 252; 11 A.L.R. 107. [*Victoria.*]

—— **Insurance by husband in favour of wife.**—*See* INSURANCE. PECHOTSCH *v.* MUTUAL LIFE INSURANCE CO. OF NEW YORK; MUTUAL LIFE INSURANCE CO. *v.* PECHOTSCH, 2 C.L.R. 823; 5 S.R. 252; 22 W.N. 103; 11 A.L.R. 467. [*New South Wales.*]

—— **Declaration of trust by endorsement on life policy.**—*See* INSURANCE. *In re* BENNETTS, 7 N.Z. Gaz. L.R. 261. [*New Zealand.*]

—— **Abolition of State Aid to Religion Act—Trust pending sale.**—Land granted by the Crown to trustees for a church, upon trusts limiting the user, was, pursuant to the Abolition of State Aid to Religion Act, 1870, declared to be held upon trust to sell and apply the proceeds to the purposes of a College affiliated to the University. *Held*, that, pending sale, the land was held upon the same trusts as those as to the proceeds of sale. TRUSTEES OF QUEEN'S COLLEGE *v.* MAYOR, &C., OF CITY OF MELBOURNE, 1905 V.L.R. 247; 26 A.L.T. 191; 11 A.L.R. 103. [*Victoria.*]

CHARITABLE TRUST—Wesleyan Church.—The classes of land referred to in secs. 3 and 4 of the Religious, Charitable, and Educational Trusts Act, 1856, and which can properly come under the trusts of the Wesleyan Methodist Model Deed, are lands which are either the sites for Wesleyan chapels, ministers' dwellings, or schools, or which have been guaranteed in trust for the Wesleyan Methodist Society, and do not include lands granted or conveyed to that society or its office-bearers upon religious, charitable, or educational trusts the benefit of which is not confined to Wesleyan Methodists, or the children of Wesleyan Methodists. There is nothing in the Act of 1856 authorising the destruction of trusts of the last-mentioned character and the substitution of the trusts of the Wesleyan Methodist Model Deed. Sec. 1 of the Act of 1856 applies, however, in the case of lands granted upon trusts of the last-mentioned character, and the land will devolve upon new trustees appointed in the manner provided by that section upon the trusts of the original grant. Upon a suit brought by persons so appointed trustees of property granted upon such trusts for the administration of the trusts, the Court declared that the property was vested in them upon the trusts of the grant, that the New Zealand Conference of the Australasian Wesleyan Methodist Church had power to appoint new trustees from time to time under sec. 1 of the Act of 1856, and that the Court had power under the Act of 1856 to commit the general supervision of the administration of the trust by the trustees to the New Zealand Conference, which it accordingly did, directing it to prepare regulations not inconsistent with the trusts of the grant. MOXHAM *v.* THE ATTORNEY-GENERAL, 24 N.Z.L.R. 769. [*New Zealand.*]

And see CHARITY—WILL.

THE TRUSTEE—Appointment—Registrar.—A Registrar has no jurisdiction in the absence of a Judge of the Supreme Court to appoint new trustees under sec. 13 of the Settled Land Act, 1886. *Re* LUXTON, 24 N.Z.L.R. 687; 7 Gaz. L.R. 468. [*New Zealand.*]

—— **Letters of administration granted to enable administrator to appoint new trustee.**—*In re* KING, 1905 Q.W.N. 43. [*Queensland.*]

—— **Removal—Costs.**—The rule that where proceedings, properly instituted by a person interested in a fund, result in a benefit to the fund or its owners, the costs of the persons instituting the proceedings are payable out of the fund, is not limited to administration actions, but extends to a suit for the removal of a trustee of a settlement *inter vivos*. PERKINS *v.* WILLIAMS, 22 W.N. 107. [*New South Wales.*]

—— **Removal—New trustee—Vesting order.**—A testator appointed two executors, but no trustee. Both executors obtained probate, paid the debts, funeral, and testamentary expenses of the testator, for which purpose they mortgaged his freehold land. One of the executors afterwards disappeared and his whereabouts were unknown, and had been unknown for more than seven years. The Court made an order for such executor's removal from his trusteeship, and appointed a new trustee in his place, and made an order vesting the trust property in the other executor and the new trustee. *In the will of* STREETER, 26 A.L.T. 171; 11 A.L.R. 99. [*Victoria.*]

—— **Vesting order—Property of company in liquidation.**—*See* COMPANY. *Re* CLARKE & SOLOMONS' AGREEMENTS TRUSTS, 5 S.R. 498; 22 W.N. 165. [*New South Wales.*]

—— **Vesting order—No representative of sole surviving trustee.**—Where there is no personal representative of a sole or last surviving trustee, the Court has no jurisdiction to make a vesting order of choses in action otherwise than consequentially upon the appointment of a new trustee. *Re* MELBOURNE TRUSTS, LTD., 22 W.N. 158. [*New South Wales.*]

—— **Construction of powers under wills.**—*See* WILL.

—— **Life insurance—Trustees' receipts.**—*See* INSURANCE. MUTUAL LIFE INSURANCE CO. OF NEW YORK *v.* PECHOTSCH; PECHOTSCH *v.* MUTUAL LIFE INSURANCE CO. OF NEW YORK, 2 C.L.R. 823; 5 S.R. 252; 22 W.N. 103; 11 A.L.R. 467. [*New South Wales.*]

—— **Absolute discretion—Attempt to control.**—The Court cannot upon an originating summons, or in any other procedure, give any direction to trustees controlling their discretion in the administration of the trusts of a will where an absolute discretion has been given to them, and where it is not suggested that they are exercising, or proposing to exercise that discretion improperly. *In the estate of* LAERY, 7 N.Z. Gaz. L.R. 32. [*New Zealand.*]

—— **Shares in company—Capital or income.**—Where shares in a company are held by trustees under a will on trust for persons entitled in succession, and the company having accumulated profits distributes them amongst the shareholders as a dividend to be applied in payment for new shares, the shareholders having no option to take the dividend in cash, such new shares issued to the trustees are capital of the testator's estate, and the life tenant is not entitled to them. *Bouch* v. *Sproule* (12 App. Cas. 385) followed. WOOLCOTT *v.* WOOLCOTT, 1905 V.L.R. 599; 27 A.L.T. 19; 11 A.L.R. 343. [*Victoria.*]

—— **Share in partnership held in trust.**—*See* PARTNERSHIP. *In re* YOUNG; YOUNG *v.* ALDOUS, 5 S.R. 394; 22 W.N. 135. [*New South Wales.*]

—— **Sanction of purchase by trustee—Costs.**—Where an application to the Court is necessary in order to obtain its sanction to the purchase by a trustee of portion of the trust estate, the purchaser must as a general rule pay the costs of the application. HORDERN *v.* BULL, 5 S.R. 518; 22 W.N. 163. [*New South Wales.*]

—— **Same trustees of two estates lending moneys of one estate to the other on mortgage.**—Where trustees of an estate are authorised or have power to borrow moneys on the security of the estate it is inadvisable that they should themselves make the advance out of moneys held by them as trustees of another estate. *In re McIntosh* (3); *Perpetual Trustee Co., Ltd.* v. *McIntosh* (21 W.N. 29; 4 S.R. 59), doubted on one point. *In re* MCINTOSH (4). PERPETUAL TRUSTEE CO., LTD. *v.* MCINTOSH, 5 S.R. 389; 22 W.N. 149. [*New South Wales.*]

—— **Care—Custody of document.**—*Held*, that under the particular terms of the will, a reasonably careful and prudent trustee might permit a document securing money owing to the estate to remain in the custody of the solicitors to the estate who, by the terms of the will, might act for the estate, who had had the custody of the document during the testator's lifetime, and of whom the co-trustee was one partner. AUSTIN *v.* AUSTIN, 1905 V.L.R. 564; 27 A.L.T. 17, 43; 11 A.L.R. 337. [*Victoria.*]

—— **Mortgaged premises.**—The duty of a trustee mortgagee in possession of mortgaged premises is out of the rents received to pay first the rates and taxes accruing due, next an annual sum to the life tenant not exceeding the amount of interest payable under the mortgage, and to hold the balance, if any, on the trusts of the settlement. Where the rates and taxes of the mortgaged premises were in arrears at the date when a trustee mortgagee went into possession, the trustee was held justified in paying off the arrears out of *corpus* in order to preserve the property, without prejudice to the question how such fresh advance should ultimately be borne. Where a trustee mortgagee in possession had under the direction of the Court effected ordinary current repairs to the mortgaged premises, the Court sanctioned the payment thereof out of the *corpus* subject to the same being recouped out of income by six equal half-yearly instalments. FARMER *v.* CHARD, 5 S.R. 342; 22 W.N. 110. [*New South Wales.*]

—— **Commission to on sale of resumed lands.**—Where lands forming part of a trust estate had been taken compulsorily, and the amount received for them had been fixed by a compensation Court, the trustees were allowed commission on the proceeds at a reduced rate only, they not having had the responsibility of a sale, and the estate having had to pay costs and expenses in obtaining the amount. *In re* LEVIN, 24 N.Z.L.R. 768; 7 Gaz. L.R. 7. [*New Zealand.*]

—— **Investments — "Securities" — Stocks and shares in companies.**—By a declaration of trust made the 8th August, 1876, trustees declared that they held "£5000 and the income thereof and the stocks funds and securities from time to time representing the

same upon trust to invest the same on such securities real or personal as we may in our uncontrolled discretion determine with full power at such discretion to call in vary or transpose any such investments and upon trust to stand possessed of the said trust funds and the securities for the time being representing the same and the income thereof" for the *cestuis que trustent* upon the trusts therein mentioned and declared. Extrinsic evidence was admitted that at the date of the deed the shares of corporations and companies were described and spoken of by commercial men, brokers, accountants and members of the legal profession under the general term "securities," which was not confined to mortgages or charges on property. *Held*, that the trustees would be justified in the *bona fide* exercise of their discretion in investing the settled moneys in shares of companies and banks trading in this State provided that such shares involved no liability other than a reserve liability in the event of liquidation. *In re* MORT; PERPETUAL TRUSTEE CO. *v.* BISDEE, 4 S.R. 760; 21 W.N. 259. [*New South Wales.*]

—— **Government securities—Shares in company.**—The defendants as trustees of post-nuptial settlements made by the testator, under which they were authorized to invest in Government or real securities, advanced money to the plaintiff and themselves, as executors of the testator, on the security of shares in a pastoral company forming part of the testator's estate, and for the purpose of paying the testator's debts and the succession duty on his estate. *Held*, a breach of trust. PHILLIPSON *v.* DOWNER, 1904 S.A.L.R. 128. [*South Australia.*]

—— **Mortgage.**—In the absence of special circumstances, trustees are not justified in lending trust moneys on a mortgage which does not contain a personal covenant by the mortgagor for repayment, and which contains a clause exempting the mortgagor from being personally responsible for the repayment of the moneys thereby secured. *In re* SMITH'S TRUSTS, 5 S.R. 500; 22 W.N. 161. [*New South Wales.*]

—— **Bankruptcy of trustee—Claim by Official Assignee to trust funds.**—*See* BANKRUPTCY AND INSOLVENCY. DAVIES *v.* DEPUTY OFFICIAL ASSIGNEE OF DAVIES, 24 N.Z.L.R. 161; 7 Gaz. L.R. 262. [*New Zealand.*]

—— **Notice given to cestui que trust instead of trustee.**—*See* HUSBAND AND WIFE. MCNAGHTEN *v.* PATERSON; PATERSON *v.* MCNAGHTEN, 2 C.L.R. 615; 5 S.R. 90; 22 W.N. 25; 11 A.L.R. 263. [*New South Wales.*]

BREACH OF TRUST—Employing agent—Statute of Limitations—Infants—Trustees' relief.—A testator made three several bequests of sums of money to his executors to be invested by them upon trust to pay the annual income of each such sum to three of his daughters. The trustees treated the whole of the sums as one fund, and divided the income therefrom amongst the three legatees. A part of that fund was lost. *Held*, that each such sum should have been invested in a separate appropriate security. Where in the ordinary course of human affairs, it is a moral necessity to employ other people and to trust other people to a given extent, and a trustee entrusts moneys to persons in such circumstances and the money is lost, he is not responsible. A trustee is liable to make good any loss which arises from the misappropriation by his solicitor of the proceeds of securities or of money belonging to the trust estate which, without there being any "moral necessity" for so doing, he entrusts to the solicitor. Where a fund is ordered to be restored as there are infants who are not barred by the Statute of Limitations, adults who are barred by that statute are not entitled to benefit by the restoration of the fund out of the estate of the trustee who has been guilty of breach of trust by which the fund was lost. The Trusts Act, 1901 (No. 1769), sec. 3 does not apply to a trustee who by mere negligence loses a trust fund. EQUITY TRUSTEES AND AGENCY CO. *v.* FENWICK, 1905 V.L.R. 154; 26 A.L.T. 137; 11 A.L.R. 15. [*Victoria.*]

—— **By trustee of Crown lands.**—*See* CROWN LANDS. ATTORNEY-GENERAL *v.* DOWN; DOWN *v.* ATTORNEY-GENERAL OF QUEENSLAND, 2 C.L.R. 639; 1905 S.R. (Q.) 16; Q.W.N. 9; 11 A.L.R. 288. [*Queensland.*]

—— **Inability to prevent.**—A Crown lease was devised to an executrix and trustee upon trust that she should permit A. to receive the rents and profits, and to use, and occupy, during his life, such moiety, thereof as he should choose, and B. to receive the rents and profits, and to use and occupy during her life, for her sole and separate use, the other moiety thereof. A., who was in occupation of the land at the testator's death, refused to choose his moiety, and remained in possession of the land for several years. In an action by B. against the trustee and A., claiming as against both, possession of her moiety, and as against A., a declaration that she was guilty of breach of trust. *Held*, that the trustee, although she had the legal estate, was a bare trustee, that she had no cause of action against A., and that, therefore, she was not guilty of breach of trust as regards B. *In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

—— **Sale by trustees—Land purchased with trust funds in breach of trust.**—Where trustees have purchased land with trust money, though not authorised to do so by the trusts, and some of the beneficiaries are infants, and are

therefore not capable of exercising an option to take the property in its unauthorised condition, the trustees can, on re-selling the land make a good title to it, without the concurrence of any of the beneficiaries. *In re Jenkins and H. E. Randall & Co.'s Contract* ([1903] 2 Ch. 362), followed. PENLINGTON *v.* BELL, 24 N.Z.L.R. 551; 7 Gaz. L.R. 114. [*New Zealand.*]

—— **Investments—Losses—Trustees' relief—Scotch law.**—Where persons wrongfully agree at the request of a trustee, to accept trusts, and in pursuance of such agreement, take an infant's money and invest it in a way which the Court either in the country from which the trust fund came as to a trustee in that country, or in Victoria, to which such fund came, as to a Victorian trustee, would not sanction, such persons and the trustee are all liable to make good any loss which may have arisen through the unauthorised investment of the trust fund. Sec. 3 of the Trusts Act, 1901, does not protect such persons when they have done that which was not authorised and have not shown that they took any steps to ascertain whether they could lawfully dispose of an infant's property in the way they proposed to do. Scotch law as to the powers of an "Administrator in Law," and as to investment of trust funds, discussed and applied. WILKIE *v.* MCCALLA, 1905 V.L.R. 278; 26 A.L.T. 133; 11 A.L.R. 43. [*Victoria.*]

ACTIONS—Conduct of cestuis que trust.—Estoppel and waiver by conduct of *cestuis que trust* as a defence to an action by trustee. *See* HUSBAND AND WIFE. PATERSON *v.* MCNAGHTEN; MCNAGHTEN *v.* PATERSON, 2 C.L.R. 615; 5 S.R. 90; 22 W.N. 25; 11 A.L.R. 263. [*New South Wales.*]

Action of negligence against trustee.—*See* NEGLIGENCE. AUSTIN *v.* AUSTIN, 1905 V.L.R 564; 27 A.L.T. 17, 43; 11 A.L.R. 337. [*Victoria.*]

—— **Money received—Income due to tenant for life.**—An action as for money had and received will not lie against trustees for income claimed to be due by a tenant for life of the income of residue under a will, unless there has been an admission by the defendants that the sum claimed is held by them for the use of the plaintiff. The remedy in equity before the Supreme Court Act, 1878, was, and the only remedy still is, an action for administration of the estate, and, in administering the estate, debts, testamentary expenses, interest, and annuities, must first be provided for in a due course of administration. PHILLIPSON *v.* DOWNER, 1904 S.A.L.R. 128. [*South Australia.*]

CESTUIS QUE TRUSTENT—As parties.—*See* PRACTICE.

—— **Income tax—Separate assessment for each beneficiary.**—*See* TAXATION. RATHBONE *v.* PUBLIC TRUSTEE, 24 N.Z.L.R. 801. [*New Zealand.*]

—— **Separation deed—Dealings with cestui que trust.**—Notice to wife when separation deed provides for notice to trustee. *See* HUSBAND AND WIFE. PATERSON *v.* MCNAGHTEN; MCNAGHTEN *v.* PATERSON, 2 C.L.R. 615; 5 S.R. 90; 22 W.N. 25; 11 A.L.R. 263. [*New South Wales.*]

ULTRA VIRES.

See BY-LAW, PACIFIC ISLAND LABOURERS ACT. TOCKASSIE *v.* YOUNG; YOUNG *v.* TOCKASSIE, 2 C.L.R. 470; 1905 S.R. (Q.) 110; Q.W.N. 45. [*Queensland.*]

UNCLAIMED LAND.

See LIMITATIONS (STATUTE OF). *In re* UNCLAIMED LAND ACT, 7 Gaz. N.Z. L.R. 386. [*New Zealand.*]

UNCLASSIFIED SOCIETIES REGISTRATION.

Power to mortgage.—A body which has become incorporated by registration under the Unclassified Societies Registration Act, 1895, has power to mortgage its land in the absence of anything in its constitution to the contrary. It would have such a power apart from the express provisions of that Act. But the words of sec. 8 of that Act, providing that a body incorporated under the Act "may hold and dispose of real and personal property," are sufficient to confer a power of mortgaging. FORSYTHE *v.* THE WELLINGTON CENTRAL MISSION, 24 N.Z.L.R. 780; 7 Gaz. L.R. 251. [*New Zealand.*]

See NUISANCE. AUCKRAN *v.* PAKURANGA HUNT CLUB, 24 N.Z.L.R. 235. [*New Zealand.*]

USE AND OCCUPATION.

See LANDLORD AND TENANT.

Purchaser remaining in possession after rescission of contract.—*See* VENDOR AND PURCHASER. WALKER *v.* CREAVEN, 7 N.Z. Gaz. L.R. 435; *see*, however, S.C., 8 N.Z. Gaz. L.R. 113. [*New Zealand.*]

VACCINATION.

See PUBLIC HEALTH.

VAGRANCY.

Rogue and vagabond—Trial by jury.—When a person, charged with being a rogue and vagabond within the meaning of sec. 28 of the Police Offences Act, 1894, exercises the option given by the Summary Jurisdiction Act Amendment Act, 1900, to be tried by a jury, the words "to the satisfaction of the justice," contained in sec. 26 sub-sec. 1 of the Police Offences Act, must be read "to the satisfaction of the jury," otherwise there would be no tribunal competent to try the prisoner. R. *v.* EGAN, 7 N.Z. Gaz. L.R. 78. [*New Zealand.*]

—— **Previous conviction.**—It is not necessary to a conviction of being a "rogue and vagabond," that the previous conviction for being a "disorderly person," upon which the subsequent conviction is partly based, should have been recorded within the six months immediately preceding the charge. No time is limited by the Justices of the Peace Act, 1882. R. *v.* EGAN, 7 N.Z. Gaz. L.R. 78. [*New Zealand.*]

—— **Arrest without warrant—Jurisdiction of justices.**—Justices cannot be required to try a person for an offence under sec. 40 (I.) of Act No. 1126, where the accused has been apprehended and brought before them without the issue of a warrant or a summons. Course to be pursued for the purpose of determining the guilt of an individual under sec. 40 (I.) considered. WILSON *v.* BENSON, 1905 V.L.R. 229; 26 A.L.T. 144; 11 A.L.R. 85. [*Victoria.*]

Provoking breach of peace. — Before there can be a conviction under sec. 8 of the Vagrancy Act it must be proved either that the threatening, abusive, or insulting words or behaviour were used with intent to provoke a breach of the peace, or that they actually caused a breach of the peace. VIDLER *v.* NEWPORT, 22 W.N. 161. [*New South Wales.*]

VEHICLES.

Using stage carriage without a license.—The defendant agreed for a lump sum to drive A. and two other persons in a carriage which was not licensed and had been lent to A. for the journey. During the journey two other passengers travelled in the carriage at the invitation of the defendant, and with the acquiescence of A. Each of these passengers paid the defendant a fare. *Held*, that the defendant had solely used a stage carriage without a license within the meaning of sec. 16 of 1899 No. 24. CALDWELL *v.* CORRIGAN, 22 W.N. 111. [*New South Wales.*]

Vehicle license—District.—*See* MUNICIPALITY. CHALLENGER *v.* CAWKWELL, 8 N.Z. Gaz. L.R. 86. [*New Zealand.*]

Width of tyres.—*See* MUNICIPALITY. GRATER *v.* MONTAGUE, 7 N.Z. Gaz. L.R. 161. [*New Zealand.*]

VENDOR AND PURCHASER.

Use and occupation—Purchaser in possession after rescission of contract.—A person who enters into possession of land under an agreement for sale and purchase, and after the rescission of the agreement remains in possession with the implied permission of the owner, is liable to pay a reasonable sum for the use and occupation of the property from the date of the rescission of the contract. *Howard* v. *Shaw* (8 M. & W. 118) and *Markey* v. *Coote* (Ir. R. 10 C.L. 149), followed. WALKER *v.* CREAVEN, 24 N.Z. Gaz. L.R. 435; *see*, however, S.C., 8 N.Z. Gaz. L.R. 113. [*New Zealand.*]

Interest on purchase money—Possession.—A contract for the sale of a station property provided that, after payment of a deposit, the balance of the purchase money should be paid within three days after the purchaser should have received notice of the signing of the conveyance, "and on such payment being made the usual order for possession will be given." Another clause of the Conditions of Sale provided that "as from the day of sale the purchaser shall be entitled to all profits of the station purchased by him and shall bear all the working expenses thereof." The station was purchased by a part owner of the property, who was also manager thereof, on behalf of himself and the other owners. *Held*, that the latter clause did not entitle the purchaser to possession, but the effect of the contract was that from the day of sale until the time fixed for completion the vendors were trustees for the purchaser of the net rents and profits of the station and that the purchaser was not bound to pay interest on the unpaid balance of the purchase money for the period prior to the day fixed for completion. STRAHORN *v.* STRAHORN, 5 S.R. 382; 22 W.N. 119. [*New South Wales.*]

Deceit—Damages.—If a vendor contracts to sell an interest in land to a purchaser, representing that he himself is entitled to the interest under a binding contract with the owner, when he knows that he has only a conditional agreement or option which may

be rescinded, and the representation was made in order to induce the purchaser to enter into the contract, and did so induce him, and the purchaser sustains damages owing to the inability of the vendor to give a title, the purchaser may recover the damage from the vendor in an action of deceit. And where the purchaser has sold his own farm, and was prevented from getting another place, and was put to expense in finding grazing for his cattle and in paying rent, *held*, that this damage was sufficiently connected with the representation, and was recoverable. The question whether the rule in *Flureau v. Thornhill* (2 W. Bl. 1078) applies in New Zealand, discussed. *Flureau* v. *Thornhill* (2 W. Bl. 1078); *Slack* v. *Lockhart* (1 N.Z.J.R. App. i); and *Bain* v. *Fothergill* (43 L.J. Ex. 245; L.R. 7 H.L. 158), considered. STEWART *v.* TAYLOR, 24 N.Z.L.R. 785; 7 Gaz. L.R. 455. [*New Zealand.*]

Option of purchase.—In cases where there is an option of purchase, where one party is bound and the other is not, the burden of proof of the existence of a binding contract lies strongly on the party in whose favour the option is given, and if the option is subject to conditions he must show that they have been strictly performed. There must be such an expression of intention by the intending purchaser as would clearly indicate to the vendor that the purchaser was then and there exercising his option of purchase, and it is necessary to prove this has been done in order to establish a contract of sale. MCRAE *v.* SHIRLEY, 24 N.Z.L.R. 712. [*New Zealand.*]

Option of re-purchase.—Where there has been a sale with option of re-purchase, the option is lost if not exercised within a reasonable time under the circumstances. ROWE *v.* OADES, 11 A.L.R. 486. [*Western Australia.*]

Conditions of sale—Reference as to title.—Upon a sale of land as belonging to the vendor in fee, one of the conditions of sale provided that "the title of the vendor shall commence with the will of a testator dated the 12th April, 1880, and the vendor shall not be called upon to abstract produce or covenant to produce any deeds or evidence of title prior to that date, whatsoever and the purchaser shall not be entitled to make any requisitions objection or investigation prior to the said 12th April 1880." The vendor alleged that the property in question was included in and passed by a general devise of the testator's real estate. On a vendor and purchaser summons—*held*, that the purchaser was entitled to require evidence of the testator's seisin. *Held, further*, that the vendor having given some evidence of the testator's seisin, and having insisted at the hearing that he had shown a good title, was not entitled to a reference as to whether he could show a good title. ARTHUR RICKARD & CO. *v.* SYNDEY LAND BANK, &c., CO., 5 S.R. 529; 22 W.N. 178. [*New South Wales.*]

Boundaries—River.—*See* WATER. R. *v.* JOYCE, 7 N.Z. Gaz. L.R. 598. [*New Zealand.*]

Validity of contract—Requisitions—Costs of procuring evidence.—In applications under sec. 10 of Act No. 1953 the Court will assume the contract to be a valid one. To an open contract for the sale of land the purchaser sent in the following requisition:—"Satisfactory evidence by statutory declaration must be adduced that the R.N., described as of Castlemaine, auctioneer, who became insolvent on the 6th June, 1866, and who is an uncertificated insolvent, is not identical with the R.N. who is a party to the title herein." "Satisfactory evidence must be adduced that the said E.B. was alive on the 24th October, 1893, that being the date of the filing of the power of attorney of the 11th September, 1893." *Held*, that the purchaser must pay the costs of procuring the evidence required by such requisitions. *Re* MATHER AND PAYNE'S CONTRACT, 1905 V.L.R. 453; 27 A.L.T. 9; 11 A.L.R. 216; (C.N.) 49. [*Victoria.*]

VENUE.

See PRACTICE.

VERMIN DESTRUCTION.

See PASTURES PROTECTION.

VESTING ORDER.

See COMPANY—TRUST AND TRUSTEE.

VETERINARY SURGEON.

"Practising"—Error in declaration—Amendment—Resolution of Board recorded in minutes—Resolution a certificate—Chairman voted out of chair—Mandamus to be addressed to members of Board.—The word "practising" in sec. 20 (1) does not necessarily involve practising and charging fees for the work done. Where a declaration in an application is headed "In the matter of the Veterinary Surgeons Act, 1887," instead of "In the matter of the Veterinary Surgeons Act, 1890," such irregularity is a mere clerical error, and does not affect the validity of the application. The majority of the Board

were satisfied that the applicant had the necessary qualification, and resolved that such applicant should be passed for his certificate, and such resolution was recorded in the minutes. The irregularity in the declaration above-mentioned was subsequently discovered and the applicant was given permission to amend his declaration. *Held*, that the resolution was effective and that the applicant was entitled to be registered. *Held, further*, that such resolution is a certificate within the meaning of sec. 13; that no formal certificate need be executed, and that it was the duty of the Board to proceed, and to see that the applicant was registered under the form in the Second Schdeule of the Act. By sec. 6 the president is to to be chairman whenever he is present, and therefore he cannot be legally voted out of the chair. When the Board is once satisfied that the applicant has the necessary qualification, it is only the Board as a body who has the right to assert that the applicant has not such qualification, or that it has been defrauded or misled by the applicant. It is the Board as such that is to register an applicant, and therefore an order *nisi* for a mandamus should not be addressed to the president alone, but to the members of the Board, acting as the Board. *In re* BATCHELOR, 1905 V.L.R. 366; 26 A.L.T. 218; 11 A.L.R. 220; *but see* S.C., 1905 V.L.R. 579; 27 A.L.T. 22; 11 A.L.R. 316. [*Victoria.*]

Mandamus—Fraud.—On an application for a mandamus to compel the Veterinary Board to cause the applicant to be registered as a veterinary surgeon, and to command the president of such Board to sign such documents as might be necessary to such registration, the applicant not having acquired any complete statutory status, evidence is admissible to show that the applicant had reached the proliminary stage on which he based his claim by fraud practised on the Board. Such fraud having been proved a mandamus will not be granted. Judgment of Madden C.J. ([1905] V.L.R. 366; 26 A.L.T. 218; 11 A.LR. 220, *supra*), reversed. R. *v.* KENDALL; *In re* BATCHELOR, 1905 V.L.R. 366, 579; 26 A.L.T. 218; 27 A.L.T. 22; 11 A.L.R. 220, 316. [*Victoria.*]

WAIVER.

Of objection to jurisdiction.—*See* PROHIBITION. *Ex parte* JACKSON, 22 W.N. 30. [*New South Wales.*]

By cestui que trust of notice to trustee.—*See* HUSBAND AND WIFE. MCNAGHTEN *v.* PATERSON; PATERSON *v.* MCNAGHTEN, 2 C.L.R. 615; 5 S.R. 90; 22 W.N. 25; 11 A.L.R. 263. [*New South Wales.*]

WARRANT.

Arrest without warrant.—*See* CRIMINAL LAW.

In criminal cases.—*See* CRIMINAL LAW.

Vagrancy.—*See* VAGRANCY.

Justices.—*See* JUSTICES.

Fugitive Offenders Act.—*See* FUGITIVE OFFENDERS.

WATER.

Change of course—Acquiescence.—Where a river invades land of a riparian proprietor by a sudden and perceptible change of course, so that the property in the land is not altered, the proprietor may construct works within his own boundary, although within what is in fact the new waterway, with the object and effect of returning the river to its old course, unless the opposite riparian proprietor has acquired a prescriptive right to its continuance in its new channel; and, where nothing more has taken place than the restoration of the condition of matters previously existing, the opposite proprietor has no right of action for damage done to his land by the river when restored to its old channel. *Semble*, that the right to return a river to its old channel in the above manner will not be lost, on the ground of acquiescence, by mere lapse of time, short of the full period of twenty years necessary under sec. 2 of the Prescription Act (2 & 3 Will. IV. c. 71), for the acquisition by the opposite proprietor of a prescriptive right to the continuance of the river in its new channel. WHATMAN *v.* UDY, 24 N.Z.L.R. 257. [*New Zealand.*]

River—Medius filus.—The legislation passed prior to the 31st March, 1870, and the Highways and Water Courses Act, 1878, did not alter the common law presumption that in grants and conveyances of land bounded by a non-tidal and non-navigable river, the grantee takes *ad medium filum aquæ*. *Held, further*, that in the particular case there was nothing in the grant or in the facts to rebut the presumption. R. *v.* JOYCE, 7 N.Z. Gaz. L.R. 598. [*New Zealand.*]

Riparian right—Road.—It is essential in order to create a riparian right that the land in respect of which it exists should be in contact with the flow of the stream. *Lyon* v. *The Fishmongers' Co.* (1 App. Cas. 662, 683), followed. There are no riparian rights incidental to the use of a road, and even if a piece of land which is in contact with the flow of a stream is given for the purpose of a road and for such purpose only it is very doubtful whether it would carry riparian rights. SKEY

v. THE MAYOR, &C. OF DUNEDIN, 24 N.Z. L.R. 804 ; 7 Gaz. L.R. 657. [*New Zealand.*]

Plan—Rights of owner of water.—A plan drawn to scale showing the course of a water race and the lands through which it is intended to flow, is a sufficient plan though it does not show distances and angles. A county council has no right to deprive one owner of water in order to supply water to other owners. The rights of an owner of water flowing in a stream from which a county council proposed to lead a water-race conserved by an order in analogy to the practice under the Mining Acts. GEAR *v.* HOROWHENUA COUNTY COUNCIL, 7 N.Z. Gaz. L.R. 632. [*New Zealand.*]

WAY.

See EASEMENT—ROAD.

WELLINGTON HARBOUR BOARD.

Lease—Alteration of terms.—The Wellington Harbour Board has no power under its Leasing Act of 1886 to alter the terms of an existing lease, but it may accept a surrender and grant a new lease, with a clause for renewal, and all such terms as the Board can grant in its ordinary leases, but for no longer period than the unexpired term of the original lease. Where the leased lands are to vest in the City Corporation, under the Wellington Harbour Board and Corporation Empowering Act, 1898, before the expiration of such term, it is prudent, though not, apparently necessary, to obtain the consent of the corporation. SARGOOD *v.* WELLINGTON HARBOUR BOARD, 7 N.Z. Gaz. L.R. 583. [*New Zealand.*]

WELLINGTON RIVERS ACT.

See RIVER BOARDS.

WESTPORT HARBOUR BOARD.

Special rate—Marshalling.—*See* R. *v.* WESTPORT HARBOUR BOARD, 7 N.Z. Gaz. L.R. 103. [*New Zealand.*]

WHARFAGE RATES.

See MELBOURNE HARBOUR TRUSTS.

WHARFINGER.

See CARRIER. BASTON *v.* DALGETY & Co., 7 W.A.L.R. 195. [*Western Australia.*]

WILL.

EXECUTION—Signature.—Where a new sentence containing a new disposition is below the signature to a will, the Court will exclude such new disposition from probate. *In the will of* PALMER, 27 A.L.T. 4 ; 11 A.L.R. 186. [*Victoria.*]

—— **Portion on back.**—Probate may be granted of a holograph will notwithstanding that, being written on one side of a sheet of paper at the foot of which it is signed and attested, a sentence begun on its face is completed on the back, and may include the words written on the back as being in the nature of an interlineation. *In re Birt* (L.R. 2 P. & D. 214) followed. *In the will of* BULL, 26 A.L.T. 123. [*Victoria.*]

—— **Blind testator.**—A blind testator whose signature is written for him by another person, must acknowledge the will in the presence of the attesting witnesses *after* his signature has been placed to the will, and before the attesting witnesses subscribe their names, and the attesting witnesses must subscribe their names not only in the presence of the testator, but in such a manner that if he had his eyesight he could see them do so. *In the will of* O'DWYER, 7 N.Z. Gaz. L.R. 64. [*New Zealand.*]

—— **Attestation.**—A will written on a printed form was executed by the testator in the presence of two witnesses, who signed their names in the presence of the testator and of each other, but the signatures were written in the blank spaces left for the names of the executors, and not opposite the attestation clause. *Held*, that the will was validly executed. *In the will of* JOHNSON, 5 S.R. 378 ; 22 W.N. 157. [*New South Wales.*]

A holograph will signed by the testator had in lieu of the formal attestation clause the words " Witness our hands," followed by the date, and the signatures of three persons. The persons could not be traced, nor the

signatures proved. *Held*, that the will must under the circumstances, be presumed to have been regularly executed, and probate granted. DENBY *v.* DENBY, 8 N.Z. Gaz. L.R. 616. [*New Zealand.*]

REVOCATION — Subsequent will. — The making of a subsequent testamentary paper does not work a total revocation of a prior one, unless the latter expressly or in effect revokes the former, or the two be incapable of standing together. *In the will of* GILBERT, 22 W.N. 186. [*New South Wales.*]

—— **Codicil.**—Where a codicil professed to be itself a last will and testament, but showed an intention to confirm the will, both documents were admitted to probate. *In re* LUCK, 1905 Q.W.N. 4. [*Queensland.*]

—— **Destruction of will.**—A testator tore his will into two pieces with the apparent intention of destroying it, but it appeared that at the time he was not of sound mind; *held*, no revocation of the will. *In the will of* THOMPSON, 22 W.N. 74. [*New South Wales.*]

LOST WILL.—*See* PROBATE AND ADMINISTRATION.

DUPLICATE WILL.—*See* PROBATE AND ADMINISTRATION.

TESTAMENTARY CAPACITY—New trial.—A will was prepared under circumstances of suspicion, and read over to the testatrix, who was then dying. The jury found that the will was duly executed, that the testatrix knew and approved the contents, that there was no fraud or undue influence, and that she was at the time of execution of sound mind memory and understanding. On motion for a new trial, *held*, that there being evidence to support the verdict, the findings should not be disturbed. BENJAMIN *v.* STEWART, 1905 S.R. (Q.) 35; Q.W.N. 12. [*Queensland*]

—— **Married woman—Acknowledgment.**—Probate was granted of the will of a married woman, where the disposition under the will was identical with that which would have been effected by the Intestacy Act, 41 Vic. No. 24, though the will was made before the Married Women's Property Act, 1890, and not acknowledged. *In re* ROEMERMANN, 1905 Q.W.N. 8. [*Queensland.*]

CONSTRUCTION—"After my decease."—A testator gave and bequeathed all his real estate and the residue of his personal estate to trustees upon trust for sale and conversion, and declared that they should stand possessed of the trust estate "upon trust (subject nevertheless to the provisions hereinafter contained) for my children in equal shares as tenants in common. Provided always that if any one or more of my children shall die in my lifetime or after my decease, and shall leave issue, then such issue shall take in equal shares *per stirpes* the share or shares original as well as accrued which the deceased parent would have taken. And I further declare that the interest which shall be taken by the issue of any one or more of my children dying in my lifetime or after my decease before attaining a vested interest in my trust estate shall only vest in such issue upon their respectively attaining the age of 21 years." At the date of his will the testator had five sons and two daughters, all of whom were then of age, and all of whom except one daughter, are now living. The will settled upon certain trusts the shares of the daughters and one of the sons. Advances made by the testator to the sons were to be deducted from their shares. After the will was made one of the daughters died, and by a codicil executed 14 days after the will the testator bequeathed her share without qualification to the trustees of her marriage settlement to be held upon the trusts thereof. The codicil did not purport to affect the shares of the other children in the said trust estate, but it recited verbatim the proviso and declaration quoted above. The question was whether the plaintiffs were not absolutely entitled to the charges given them by the will. *Held*, by the Court of Appeal, that the words "after my decease" could not be struck out of the will, as there was nothing in the will to show that they did not express the testator's intention, and that the share taken by each of the plaintiffs was defeasible upon his death at any time leaving issue. IZARD *v.* MAXWELL, 7 N.Z. Gaz. L.R. 553. [*New Zealand.*]

—— **"And"—"Or."**—Where by a will an estate is given in fee to a beneficiary on his attaining the age of twenty-one years with a gift over in the event of the beneficiary dying before attaining that age, "or without male issue," those words are to be read "and without male issue." So *held* by Madden C.J. and a'Beckett J. (Holroyd J. dissenting), affirming the judgment of Hood J. TRUSTEES, &C., Co. *v.* BUTLER, 1905 V.L.R. 650; 27 A.L.T. 63; 11 A.L.R. 365. [*Victoria.*]

—— **"Between."**—The word "between" is, in legal English, a good equivalent for "among" to express the idea of distributive discrimination as distinguished from discrimination between two persons or two classes of persons. EVANS *v.* TURNER, 7 N.Z. Gaz. L.R. 8. [*New Zealand.*]

—— **"Children remaining at home."**—The testator left the annual interest accruing from his estate, and also any portion of the principal which his executors considered necessary, upon trust for the maintenance of his wife and any of his children "remaining at home," and in the event of his wife's marriage before the youngest child attained twenty-one upon trust solely for the main-

tenance of his children " remaining at home." Upon the youngest child attaining twenty-one the property was to be divided, subject to an annuity to his wife so long as she remained his widow. After his death his widow until her marriage, continued to reside in the house occupied by the testator at the time of his death. After her marriage she, with the testator's three youngest children, resided with her husband. *Held*, that upon the provisions of the will, and the facts of the case, the children of the testator " remaining at home" within the meaning of the trust, which took effect from the re-marriage of the widow were all those children of the testator who, not withstanding her marriage, continued to reside with her as their mother, and no others, and that the trust was not limited to children under twenty-one. GILLESPIE *v.* GILLESPIE, 7 N.Z. Gaz. L.R. 584. [*New Zealand.*]

—— **" Eldest son."**—By his will a testator devised a life estate in certain property to A., and upon his death a life estate to the eldest son of A., with a gift over to the persons entitled under the Statute of Distributions to the intestate estate of the eldest son of A. The first born son of A. was at the date of the will dead to the knowledge of the testator. The second son of A. was alive at the dates of the will and of the death of the testator, but pre-deceased A. The third son of A. survived A. *Held*, that the second son of A. took under the gift to the eldest son of A. A similar devise was made to B. and on his death to the eldest son who shall " then be living " of B. These gifts preceded those of A. and his eldest son. *Held*, that the Court should not read in the words " who shall then be living " into the gift to the eldest son of A. *In the will of* MALIN, 1905 V.L.R. 270; 26 A.L.T. 200; 11 A.L.R. 129. [*Victoria.*]

—— **" Successors "**—Devise by Maori testator of land to trustee upon trust to pay from the income thereof an annuity to his widow, and on her death or re-marriage, to convey the land to the testator's son, and should the son die before the death or re-marriage of the widow, to hold in trust for such persons as were or would be found by the Native Land Court to be the testator's successors in respect of other his real estate not by the will specifically devised. Balance of profits from the said land after payment of the annuity to the son, or after his death before the death or re-marriage of the widow, to such successors as above-mentioned. *Held*, that on the death of the son, the devised land went to those persons who were the testator's successors according to Maori custom at the testator's death. *In the will of* HIRENE TE KANI, 7 N.Z. Gaz. L.R. 252. [*New Zealand.*]

—— **Charity.**—A devise or bequest in general terms to an unincorporated charitable society or association will not fail for uncertainty merely because the person who can claim and give a receipt for what is devised or bequeathed is not designated in the will. Devise and bequest of freehold dwelling with fifty pounds for repairs to the Pilgrim's Rest, managed by A. and his wife, and of mortgagees' shares and money to the manager of the said Pilgrim's Rest. The Pilgrim's Rest was an unincorporated charitable institution, having specific objects, and solely maintained by voluntary contributions subscribed by the public. *Held*, that the trustee of the will should convey the real estate in question to A. and his wife as joint tenants in fee, upon trust for the Pilgrim's Rest, and that the moneys or proceeds of mortgages and shares should be paid to persons acting on behalf of the association. *In the will of* SEADON; UNION TRUSTEES CO. *v.* CHARBURY, 27 A.L.T. 118; 11 A.L.R. 511. [*Victoria.*]

—— **Forfeiture clause.**—A testator by his will gave his estate to trustees upon trust for conversion and investment, and out of the income of such investments to pay certain annuities. During the lifetime of the annuitants the residue of the trust income was to be divided equally amongst nine of the testator's nephews and nieces, of whom R.A.G. was one, and on the death of the annuitants, the *corpus* was to be divided equally amongst the same nine nephews and nieces. The testator directed that if any beneficiary should " suffer judgment or become insolvent or take the advantage of any Insolvent Act for the purpose of getting rid of his or her liabilities," the trustees might withhold any income payable to such beneficiary, and might settle the share of *corpus* of such beneficiary in trust for him, or his wife, or family. Judgment was recovered against R.A.G., and he was subsequently adjudicated insolvent, during the lifetime of the annuitants. *Held*, that, though the trustees had power to withhold the income from R.A.G., there was no forfeiture of it, and it still belonged to him, and could not be withheld from his trustee in insolvency, and also, that his interest in the *corpus* not being an interest in possession until the death of the annuitants, the condition as to settling his share was valid, and the trustees had power on the final distribution of the estate to settle R.A.G.'s share in accordance with the direction in the will. *In re* ARMSTRONG; GARD *v.* FOTHERINGHAM, 1904 S.A.L.R. 99. [*South Australia.*] And *see* SMIDMORE *v* SMIDMORE, *col.* 341.

—— **Defeasance clause.**—A testator by his will gave his residuary estate to his executor on trust to pay the income to the testator's wife for life " and after her death the whole to be realised and divided share and share alike between my two sons Michael and Robert. Should they not return to the colony and claim their shares within seven years after my wife's death then I authorise my executor

to divide the same between the catholic charities of the Archdiocese of Sydney as he shall deem proper." *Held*, that, assuming this was a gift to charities and not a mere power, the defeasance clause must be construed strictly, and one of the sons having returned and claimed his share, the gift to the charities failed. MORAN *v.* ATTORNEY-GENERAL, 5 S.R. 142; 22 W.N. 49. [*New South Wales.*]

—— **Restraint on anticipation—Married woman.**—*See* HUSBAND AND WIFE. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

—— **Gift over.**—A gift over of the respective interests specifically given by will to certain children of the testator in the event of death previous to being married, *held*, not to take effect in the event of the prior legatees dying unmarried after the time of distribution of their respective interests. *In re* NOONAN, 1904 S.A.L.R. 151. [*South Australia.*]

—— **Uncertainty.**—A testator by his will directed:—"As to the residue of my real and personal estate I give and bequeath unto my brothers A. and B. or their heirs, for their sole use and benefit in equal shares. And the residue and remainder of all my real and personal estate I give devise and bequeath the same unto my wife E." *Held*, that, it being impossible to say how much the testator intended to give his brothers, the gift to them failed for uncertainty, and the widow took the residue. The decision of Gordon J. affirmed. *In re* MCKENZIE, 1904 S.A.L.R. 124. [*South Australia.*]

A testator directed that certain property "shall be distributed by my sister . . . . Ellen Bourk as she may deem fit." *Held*, that the testator did not thereby make an absolute gift of the property to his sister, but created a trust with regard to such property, and that the gift was void, it being too uncertain to be carried out by the Court. *In the will of* BOURK; CUNNINGHAM *v.* RUENBACH, 27 A.L.T. 125. [*Victoria.*]

Gifts by will on the following conditions: that the legatee "works agreeably with his brothers and mother"; that the testator's trustees were satisfied that "my last-named sons and daughters keep together and work harmoniously one with another"; and conditionally upon the legatee "having acted obediently towards her mother and my trustees": *Held*, to be unenforceable, as also was a clause authorising the trustees to vary the conditions of the will. *In re* NOONAN, 1904 S.A.L.R. 151. [*South Australia.*]

In charitable devises and bequests.—*See In the will of* SEADON, 27 A.L.T. 118; 11 A.L.R. 511, *col.* 338.

—— **Lapse — Executory bequest — Intestacy.**—A testator directed his trustees "during the lifetime of my brother E.H.S. if he shall be a bachelor or if at the time of my death he shall be a widower without issue then living," to invest a one-ninth share of residue and to pay the income thereof to E.H.S. so long as he should live and remain a bachelor or widower without issue, "and on the said E.H.S. dying a bachelor or widower without issue" such share was to be divided amongst the other parties entitled to share in the residue under the will "in the same shares and proportions as they are so entitled." E.H.S. and A.T.S. (another brother of the testator to whom another ninth share of residue had been given in terms identical with those above-mentioned) both died bachelors in the testator's lifetime. *Held*, (a) that, applying the rule stated by Wood V.C., in *Varley* v. *Winn* (2 K. & J., at p. 705), the executory bequest took effect, and (b), that there was no intestacy as to any part of the lapsed shares of E.H.S. and A.T.S., the whole of which shares on the testator's death accrued to and were divisible amongst the parties entitled to the remaining seven-ninths of residue. *Evans* v. *Field* (8 L.J. N.S. Eq. 264), followed. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

A testator declared that if F.S., a legatee, should pre-decease him, certain moneys directed by the will to be paid to F.S., should be paid to the executors or administrators of F.S., to be disposed of as part of the personal estate of F.S. F.S. resided in England and died there in the testator's lifetime. The will of F.S. had been proved in England, but not in South Australia, nor had the English probate been re-sealed in this State. *Held*, that the gift to F.S. had lapsed, but that his executrixes took it by virtue of the special provision above referred to, and that it was not part of the estate of F.S. and did not pass under his will; and, further, that his executrixes were entitled to be paid the moneys referred to without proving his will or re-sealing the English probate in South Australia. *The Lord Advocate* v. *Bogie* ([1894] A.C. 83), followed. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

—— **Falsa demonstratio.**—A testator by his will specifically devised three sections Nos. 312, 318, and 320, in a certain named hundred, to three of his children respectively, and declared that his real estate, "namely sections 312, 318, and 320," was thereby demised "subject to a lease" to his son-in-law. At the time of the execution of the will and of his death the testator was the owner of sections 314, 318, and 320 in the hundred mentioned, but never owned section 132, nor any other lands except those mentioned. By a lease, made on the same day as his will, the testator leased sections 314, 318, and 320 to his son-in-law. *Held*, that, there being in the will two inconsistent descriptions, the reference to the lease was the leading description, and that the will should be given effect to as if "314" had been inserted instead of

"312." *In re* HURST, 1904 S.A.L.R. 120. [*South Australia.*]

—— **Conversion—Executory interest.** —A share of residue was given in trust to pay the income to the testator's sister E.L.S., a spinster, for life or whilst she remained unmarried, but in the event of E.L.S. marrying she was to take the said share of residue absolutely. The will contained a trust for conversion and investment, with powers of suspending conversion at the discretion of the trustees, and of leasing and management, and also empowered the trustees to hold and retain certain securities held by the testator at his death, and in particular the shares in a certain trading company, for so long as they might, in their discretion, deem it advisable in the interests of the testator's estate. *Held*, that there were sufficient indications of intention in the will to exclude the application of the rule in *Howe* v. *Earl of Dartmouth* (7 Ves. 137), and that E.L.S. was entitled to enjoy in specie the whole income actually produced by her share of residue. *Semble*, E.L.S. took an absolute vested interest subject to an executory limitation, and in such a case the inference as to the intention upon which the rule in *Howe* v. *Earl of Dartmouth* is based is weaker. *Quære*, whether the rule in *Howe* v. *Earl of Dartmouth*, is generally applicable to such a case. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

—— **Absolute gift—Cutting down.**—A testator by his will gave one-fourth of his residuary realty to trustees on trust for his son absolutely. By a codicil the testator cut down the son's interest to a life estate determinable on alienation, in which event, the income during the remainder of the son's life was to be paid to the persons who would have been entitled if the son were then dead, with a discretionary power to the trustees to pay the income to the son's wife during the remainder of his life. The gift in remainder after the son's death was void either for uncertainty or as infringing the rule against perpetuity. The property was resumed and the compensation money paid into Court under the Public Works Act, 1900. *Held*, that the power in the trustees to pay the income to the son's wife on alienation was valid, notwithstanding that by reason of the rule in *Lassence* v. *Tierney* (1 Mac. & G. 551) and *Hancock* v. *Watson* ([1902] A.C. 14) the son was, subject to this restriction against alienation, entitled to the property in fee simple; and that, therefore the son was not entitled absolutely to to the compensation money. SMIDMORE *v.* SMIDMORE, 5 S.R. 492; 22 W.N. 141. [*New South Wales.*]

—— **Contingent remainder.**—*See* ESTATE.

—— **Life interest in money—Satisfaction of debt by legacy.**—The will of a testatrix whose husband was indebted to her in the sum of £300, contained the following clause:—"All the money after all is paid which I claim is in my husband's R.Y. name, as I did not think it required separate accounts to husband and wife, and I claim £300. I leave the interest and if necessity makes my husband R.Y. take from the capital and at his death I wish the rest to be divided equally between my brother, A.L. and my sister, J.J." There were also bequests of chattels to various persons. The husband made his will subsequently to the wife's death, and in the erroneous belief that her will was invalid. After a general direction for payment of debts, he bequeathed £200 to his daughter, and £150 each to the brother and sister named in his wife's will, with a proviso that if he should need any of the money, it should be deducted from these three sums proportionately. The chattels of his wife which he retained in his possession till death, he bequeathed to the persons who were to receive them under his wife's will. His residuary estate, if any, he left to charitable purposes. No part of the sum of £300 was used by the husband. *Held*, (1) that the effect of the wife's will was to entitle the husband to retain the sum of £300 in his hands during his life, with power during that time to take from it in case of necessity, of which he was the sole judge, but not to dispose thereof by will; (2) that the bequest by the husband of £150 each to the brother and sister named in his wife's will were made with the intention of carrying out his wife's wishes and of satisfying the debt of £300 due to his wife's estate, and that the general direction for payment of debts contained in the husband's will did not extend to that debt. *In the estate of* YULE, 7 N.Z. Gaz. L.R. 431. [*New Zealand.*]

—— **Vesting—Period of distribution.**—The testatrix left a sum of money to her trustee upon trust to pay the income of the fund to her sister and after her decease to apply such income for the education and advancement of her two sons, the plaintiffs, until they attained the age of 26 years, with power to apply part or the whole of the principal in the same way, share and share alike, and in the event of the death of either, the survivor to be entitled to the deceased brother's share. There was no gift over. *Held*, (the sister being dead and the sons both having attained their majority) that the shares had become vested and that the trustee had power to pay over the fund to the plaintiffs in equal shares and obtain a valid discharge. *Fox* v. *Fox* (L.R. 19 Eq. 286), followed. BREBNER *v.* O'MEARA, 8 N.Z. Gaz. L.R. 74. [*New Zealand.*]

A will directed a conversion of the testator's estate into money, the application of the income in whole or in part to the maintenance and education of such of the children of the testator as being a son or sons should be under twenty-one, and being a daughter or daughters should be under that age and unmarried, the accumulation of the balance

of the income at compound interest, and the addition of it to capital. It then directed that immediately upon all the testator's surviving children being a son or sons attaining twenty-one, or being a daughter or daughters attaining that age or marrying, the trustees should stand possessed of the residuary trust funds and the accumulated interest thereon (if any) for his child if only one, or all his children if more than one, who being a son or sons should have attained the age of twenty-one, or being a daughter or daughters should have attained that age or married. There was a proviso that if any child of the testator's should die in his life-time or before the time appointed for the distribution of the residuary trust funds, leaving a child or children who should survive the testator, and being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, then and in every such case the last-mentioned child or children should take the share which his, her, or their parent would have taken if such parent had survived the testator, and lived until after the time appointed for the distribution of the residuary trust funds. *Held*, that the share of a daughter vested on her attaining twenty-one, and did not pass to the other children of the testator on her dying before the period of distribution without leaving a child or children. *In re* NICHOLSON; STACE *v.* NICHOLSON, 24 N.Z.L.R. 633; 7 Gaz. L.R. 115. [*New Zealand.*]

A direction to trustees to distribute the interests of certain beneficiaries, "as and in such manner as the circumstances of my estate may permit," construed, in the absence of special circumstances making a postponement of distribution necessary, to mean, *prima facie*, on the beneficiaries respectively attaining twenty-one years. *In re* NOONAN, 1904 S.A.L.R. 151. [*South Australia.*]

—— **Contingent legacy—Severance — Interest.**—A testator gave, devised and bequeathed his real and personal estate to his executor and trustee upon trust for sale and conversion, and declared that his trustee should stand and be possessed of the money to arise from the sale and conversion upon trust to pay debts, &c., and subject thereto to stand possessed of a sum of £1000 in trust for A., and also to stand possessed of £4000 in trust for four infants upon their attaining their respective ages of 21 years, and to stand possessed of the residue of the estate in trust for others. *Held*, that the contingent legacies to the infant were not severed from the rest of the estate for the benefit of legatees, but in order to facilitate distribution, and therefore did not carry interest while in suspense. *Held, also*, that each legatee would be entitled to interest (fixed at 4 per cent.) in respect of his portion of the legacy from the attaining of the age of twenty-one years, and that the residuary legatees were not entitled to any interest. *In the will of* CARFRAE, 1905 V.L.R. 641; 27 A.L.T. 71; 11 A.L.R. 451. [*Victoria.*]

—— **General devise—Exceptions.**—A testator by his will made a general devise of all his real and personal property to his children by his then wife, and then made devises exceptions out of the general devise. One of the specific devises lapsed by the death of the devisee before the testator, and on the determination of the life estate the question was what was the destination of the property included in the lapsed devise. *Held*, that the general devise with exceptions operated as a devise of the residue, and that the property was devisable among all the children of the testator who survived him. In the said general devise, the testator used the words "to the above children." No children had been previously mentioned, but three children were named in the specific devises. *Held*, that there was no intestacy, as the context was not sufficient to limit the generality of the devise. *In the will of* KENNARD, 8 N.Z. Gaz. L.R. 73. [*New Zealand.*]

—— **Discretion of trustees—Marshalling.**—A testator directed his trustees to secure a farm for his son J.N., "as soon as such my trustees think fit to do and as they see that my estate can afford it, and with due regard to my remaining sons and daughters but not before." *Held*, that the measure of the testator's bequest must be decided by the trustees, and that, in exercising their discretion, they must do so subject to making provision for payment of the testator's debts, and the other legacies given by his will. *Held, also*, that whatever amount the trustees decided to spend in securing a farm for J.N. was a pecuniary legacy; and that, there being a general direction for payment of debts, and the personal estate being insufficient, the pecuniary legatees were entitled to have the assets marshalled as against specifie devisees of the real estate. *In re Roberts* ([1902] 2 Ch. 834), followed. *In re* NOONAN, 1904 S.A.L.R. 151. [*South Australia.*]

—— **Invest the residue.**—By his will a testator directed his trustees, out of the income of his estate, to pay an annuity of £200 to his wife during widowhood. He further directed his trustees to realise his property, and after payment of certain pecuniary legacies, "to invest the residue of the moneys in their hands," during the widowhood of his wife, and, after her death, to distribute the *corpus* among certain persons. The income of the estate was largely in excess of the annuity. *Held*, that there was no intestacy as to the surplus income, as the direction to invest the residue covered it. REID *v.* MCINTYRE, 26 A.L.T. 229; 11 A.L.R. 159. [*Victoria.*]

—— **Legacy whence payable—Annuity—Charged on corpus.**—Where by his will a

testator expresses the intention that his real and personal property shall form a blended mass from which certain legacies and annuities are to be paid, these legacies and annuities are charged on the *corpus* of the real estate, and in such a case the rule that a legacy is *prima facie* payable out of personalty has no application. A testator gave, devised and bequeathed to his executors and trustees all his real and personal estate whatsoever upon the trusts thereinafter declared of and concerning the same, that is to say upon trust to pay his debts, &c. He then gave a specific bequest to his wife, he directed his executors and trustees to pay an annuity to each of three children, he directed his executors and trustees to set aside three several sums and to pay the income arising therefrom to three several persons for each of their lives with a gift over of the *corpus*, then followed a gift of a sum of money to his solicitor. The will continued:—"As to the rest and residue of the income of my trust estate after making the payments hereinbefore set forth I direct" my executors and trustees "to pay the same to my wife for life or until her re-marriage," and from and after her death or marriage again I direct my executors or trustees "to convert the whole of my estate whether real or personal into money and to divide the same amongst my five children." He also empowered his executors and trustees, "notwithstanding anything hereinbefore contained to the contrary" to sell any of his real estate and invest the proceeds, "and pay and apply the income arising therefrom in the same manner as if my said real estate had not been sold as hereinbefore appearing." *Held*, that the annuities to the three children and the three several sums directed to be set aside were charged upon the *corpus* of the real estate. Judgment of Hodges J. on this point reversed. PARKIN *v.* JAMES (No. 2), 2 C.L.R. 565; 11 A.L.R. 439. [*Victoria.*]

—— **Gift to wife for benefit of herself and children.**—A testator devised and bequeathed all his real and personal estate to his wife to hold the same unto her for her life for the benefit of herself and their children, and at her death to be divided equally among such of their children as should then be living. *Held*, that the widow held the property in trust for herself and the children, and that during her lifetime the widow and children were equally and jointly entitled to the income thereof. Judgment of a'Beckett J. ([1904] 29 V.L.R. 932), affirmed. *In the will of* SMITH; SMITH *v.* SMITH, 1905 V.L.R. 470. [*Victoria.*]

—— **Legacy—Interest.**—A testator directed his trustees to set apart and invest a sum of £20,000 and to pay the income derived from such investment to his adult sister E.L.S. during spinsterhood. The trustees having, pursuant to such direction, and within one year from the death of the testator, set apart and invested several sums to meet the said legacy, such sums amounting in all to £20,000. *Held*, that the legatee, who was still unmarried, was entitled to the interest on such several sums from the time of their respective setting apart and investment, notwithstanding that a period of twelve months had not elapsed from the testator's death. *In re* SCARFE, 1904 S.A.L.R. 15. [*South Australia.*]

—— **Direction to sell and divide.**—A testator by his will gave his real and personal estate to his widow for life, and provided that:—"In the event of its not being found practicable to carry on my estate as at present, I desire that my executors will realise by sale to best advantage my land in . . . . and proceeds of such sale to be applied to first clearing off all debts on my property . . . and the balance (if any) I wish to be divided equally between my two sons John and Alexander." At the testator's death, the land in question was subject to a mortgage of £5000. The widow paid off this mortgage out of income, and, consequently, up to her death, it had not been found impracticable to carry on the estate, and the condition upon which the division was to take place had not arisen. *Held*, that the testator must be taken to have meant the division between his two sons to take place in any event, and that therefore there was no intestacy. *In the will of* MCCORKINDALE; HEATH *v.* MCCORKINDALE, 26 A.L.T. 238; 11 A.L.R. 173. [*Victoria.*]

—— **Specific bequest—Sums payable under policy of insurance—Mortgage—Ademption pro tanto.**—A testator by his will bequeathed "all moneys and bonuses which may be due under my life assurance policy" and directed that his funeral and testamentary expenses and debts should be paid out of his residuary estate. He subsequently borrowed from the insurance society on the security of the policy, the memoranda of deposit providing that, "should such policy become a claim the principal sum hereby secured, together with interest to date, shall become due and be deducted from the sum assured." *Held*, that the contract of mortgage between the assured and the society did not affect an ademption *pro tanto* of the specific legacy, and that the legatee was entitled to have the charge on the policy redeemed out of the residuary estate. *In re* SOMERVILLE; PERMANENT TRUSTEE CO. OF N.S.W. *v.* SOMERVILLE, 5 S.R. 390; 22 W.N. 138. [*New South Wales.*]

—— **Devise of income.**—A testator directed the income from certain lands to be paid to his two daughters in equal shares during their lives and the life of the survivor. He further directed that upon the death of the last surviving daughter the lands should be sold and the proceeds divided between the children of the two daughters, "each of my said daughter's shares going to her own children

only." One daughter having died, *held*, that the executors of the deceased daughter were entitled to a moiety of the income during the life of the survivor. STONE *v.* EPPLE, 11 A.L.R. 503. [*Victoria.*]

—— **Gift to wife of income.**—A testator gave his real and personal estate to trustees upon trusts for conversion and investment, and to hold the income "in trust to permit and suffer my wife to receive the whole of the said income for the support of my children by her so long as she may remain a widow and during the minority of my said children." *Held*, that the widow was entitled to receive the income subject to an obligation to maintain the children during their respective minorities. DICKEY *v.* DRISCOLL, 22 W.N. 197. [*New South Wales.*]

—— **Trust for maintenance of a class out of income—Adults and infants.**—An imperative trust to apply income for the maintenance, education, and support of a class until the youngest member thereof attains his majority, in the absence of a special direction to the contrary, entitles each member of the class on attaining his majority to an aliquot share of the income during the continuance of the trust; subject, however, to the right of the trustees to withhold and accumulate portion of the income to meet contingencies. *In re* WILSON; HARDY *v.* WILSON, 5 S.R. 345; 22 W.N. 99. [*New South Wales.*]

—— **Rents.**—A testator by his will dfrected that after his wife's death two of his sons should collect the rents oi all his estate, and after paying all expenses, the balance should be equally divided between "all my children living, monthly. The whole or portion of the estate may be sold with the consent of the majority of my children," naming all who were living at the date of the will. *Held*, (1) that the word "rents" included the whole income of the estate; (2) that the gift of the rents carried with it the gift of the *corpus*; and (3) that on the death of the widow the children named in the will then living, and the representatives of those who were dead, were entitled to equal shares as tenants in common of *corpus* of the estate. *In the will of* BAKER; BAKER *v.* HUTCHINSON, 1905 V.L.R. 416; 26 A.L.T. 222; 11 A.L.R. 177. [*Victoria.*]

—— **Avoiding intestacy.**—By his will, after certain specific devises and bequests, the testator devised and bequeathed the residue of his real and personal property to trustees on trust as follows:—(1) To pay the income to P.R. until her son R.R. attained the age of ten years; (2) thereafter and until R.R. attained twenty-one to devote not more than half of the income to the education of R.R.; (3) should R.R. die before twenty-one, the whole property to P.R.; (4) should both P.R. and R.R. die before R.R. attained twenty-one, or should the trustees not be allowed complete control of the education of R.R., in trust for two nephews. *Held*, that R.R. took (1) half the income of the residuary estate arising after he attained the age of ten years, and also the unexpended portion of the other half; (2) on attaining twenty-one the whole of the *corpus*. *Re* WALKER, 1905 S.R. (Q.) 74; Q.W.N. 25. [*Queensland.*]

—— **Power to carry on business.—Partnership.**—A testator gave his trustees authority to carry on a partnership business which had been carried on by him at the time of his death, and to employ in that business "such part of my residuary estate (not exceeding the amount that may be invested by me in the said business at the date of my death) as they may think fit." *Held*, that the trustees might employ in the business a sum equal to the amount to the testator's credit in the books of the partnership added to the amount he had provided for the partnership by a bank overdraft on the partnership account. WOOLCOTT *v.* WOOLCOTT, 1905 V.L.R. 599; 27 A.L.T. 19; 11 A.L.R. 343. [*Victoria.*]

—— **Construction on application for administration.**—On application for administration the Court will deal with the construction of the will so far as to determine whether the applicant is the person entitled to administration, and notwithstanding that some of the persons interested are not represented. *In the will of* MALIN, 1905 V.L.R. 270; 26 A.L.T. 200; 11 A.L.R. 129. [*Victoria.*]

ELECTION.—To raise a case of election under a will the intention to dispose of property over which the testator has no power of disposition, must appear in the will itself; evidence dehors the will is not admissible on this point. *Dictum* of Jessel M.R. in *Pickersgill* v. *Rodger* (5 Ch. D. 163, 170), questioned and not followed. *In re* GOODWIN, 22 W.N. 215. [*New South Wales.*]

SATISFACTION of debt by legacy.—*See In the estate of* YULE, 7 N.Z. Gaz. L.R. 431, *supra*, *col.* 342.

DONATIO MORTIS CAUSA—Essentials to gift—Principles.—The deceased on the day of her death stated in the presence of witnesses that her niece (naming her), in whose house she was living, was to have everything she possessed; she also handed a key of a box to her niece so that the latter could get out of it certain papers and scrip and a savings bank book to hand to H. so that H. could arrange for the preparation of a will in the niece's favour. *Held*, affirming the decision of Walker J., that there was no valid *donatio mortis causa*. *In the estate of* WOOD, 21 W.N. 254. (*New South Wales.*]

WITNESSES EXAMINATION.

See EVIDENCE.

WORDS.

"**Absents himself.**"—*In re* HARRIS, 7 N.Z. Gaz. L.R. 572. [*New Zealand.*]

"**Accidental slip.**"—NINNIS *v.* MILLER, 1905 V.L.R. 669; 27 A.L.T. 125; 11 A.L.R. 479.

"**Action.**"—ROBERTSON *v.* COMMISSIONER OF STAMPS, 22 W.N. 200. [*New South Wales.*]

"**Actual service.**"—NAPIER *v.* SHOLL, 1904 S.A.L.R. 73. [*South Australia.*]

"**Athletic sport.**"—ATTORNEY-GENERAL *v.* DOWNS, 1905 S.R. (Q.) 16; Q.W.N. 9. [*Queensland.*]

"**Available.**"—HARRISON *v.* COLLINS, 1905 Q.W.N. 72. [*Queensland.*]

"**Award.**"—*Ex parte* PETCHELL, 1905 A.R. 13. [*New South Wales.*]

"**Between.**"—EVANS *v.* TURNER, 7 N.Z. Gaz. L.R. 8. [*New Zealand.*]

"**Building.**"—WEARNE *v.* BEALES, 22 W.N. 13. [*New South Wales.*]

"**Cash.**"—*In re* HOBSON, 1905 Q.W.N. 2. [*Queensland.*]

"**Charitable purposes.**"—TRUSTEES OF QUEEN'S COLLEGE *v.* MAYOR, &C. OF CITY OF MELBOURNE, 1905 V.L.R. 247; 26 A.L.T. 191; 11 A.L.R. 103. [*Victoria.*]

"**Clerical error.**"—NINNIS *v.* MILLER, 1905 V.L.R. 669; 27 A.L.T. 125; 11 A.L.R. 479. [*Victoria.*]

"**Communication.**"—STACK *v.* STACK, 8 N.Z. Gaz. L.R. 79. [*New Zealand.*]

"**Control.**"—THOMPSON *v.* GREY, 24 N.Z. L.R. 457; 7 Gaz. L.R. 136. [*New Zealand.*]

"**Controlling.**"—TWOHILL *v.* FAIRHALL, 24 N.Z.L.R. 535; 7 Gaz. L.R. 211. [*New Zealand.*]

"**Costs.**"—*In re* DICKENSON'S APPLICATION, 1905 V.L.R. 235; 26 A.L.T. 124; 11 A.L.R. 20. [*Victoria.*]

"**Damage.**"—MACDONALD *v.* CARTER, 1905 V.L.R. 181. [*Victoria.*]

"**Dangerous illness.**"—DE PLEDGE *v.* AUSTRALASIAN UNITED STEAM NAVIGATION CO., 1904 S.A.L.R. 61. [*South Australia.*]

"**Debts.**"—*In the will of* BLAKE; O'NEIL *v.* HART, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133. [*Victoria.*]

"**Dispute.**"—KEMPTHORNE, PROSSER & CO.'S NEW ZEALAND DRUG CO. *v.* CHAMBERLAIN, 24 N.Z.L.R. 205; 7 Gaz. L.R. 296. [*New Zealand.*]

"**Employed.**"—WALKER *v.* CHAPMAN, 1904 S.R. (Q.) 330; Q.W.N. 83. [*Queensland.*]

"**Employer.**"—COMMERCIAL PROPERTY &C. CO. *v.* OFFICIAL ASSIGNEE OF WAGHORN AND BURT, 24 N.Z.L.R. 655; 7 Gaz. L.R. 652; MCCONOCHIE *v.* WEBB, 24 N.Z.L.R. 229. [*New Zealand.*]

"**Exceptional traffic.**"—MUNT, COTTRELL & CO. *v.* DOYLE, 24 N.Z.L.R. 417. [*New Zealand.*]

"**Expenses incurred.**"—A clause providing that a municipal council should be entitled to be "repaid expenses incurred" does not necessarily mean that the money must have been paid out of pocket in order to be an expense "incurred." BOROUGH OF TAMWORTH *v.* SANDERS, 2 C.L.R. 214. [*New South Wales.*]

"**Frequenting and using.**"—REIGER *v.* EVANS, 7 W.A.L.R. 107; WISE *v.* DAVEY, 7 W.A.L.R. 109. [*Western Australia.*]

"**Gambling.**"—FULLER *v.* FOUHY, 24 N.Z. L.R. 753; 7 Gaz. L.R. 574. *New Zealand.*]

"**Guano.**"—CUMING SMITH *v.* MELBOURNE HARBOUR TRUST COMMISSIONERS, 2 C.L.R. 735. [*Victoria.*]

"**Heirs.**"—*In re* GOODWIN, 4 S.R. 682; 21 W.N. 222. [*New South Wales.*]

"**Indifferent.**"—*In re* COLEMAN AND ROYAL INSURANCE CO., 24 N.Z.L.R. 817; 7 Gaz. L.R. 414. [*New Zealand.*]

"**Injury.**"—MCDONALD *v.* CARTER, 1905 V.L.R. 181. [*Victoria.*]

"**Inlet of the sea.**"—ATTORNEY-GENERAL *v.* MEREWETHER, 5 S.R. 157; 22 W.N. 50. [*New South Wales.*]

"**Institution.**"—*In re* DECEASED PERSONS' ESTATES DUTIES ACT, 8 N.Z. Gaz. L.R. 46. [*New Zealand.*]

"**Insulting words.**"—SELLERS *v.* BISHOP, 11 A.L.R. (C.N.) 61. [*Victoria.*]

"**Interested in.**"—NORTON *v.* TAYLOR, 22 W.N. 36. [*New South Wales.*]

"**Legal personal representative.**"—KELLY *v.* FAKE, 24 N.Z.L.R. 547; 7 Gaz. L.R. 381. [*New Zealand.*]

"**Locked.**"—GRAHAM *v.* GUBBINS, 26 A.L.T. 181; 11 A.L.R. 81. [*Victoria.*]

"**Machinery.**"—*In re* INCOME TAX ACTS, 1905 V.L.R. 185; 26 A.L.T. 177; 11 A.L.R. 65. [*Victoria.*]

"**Military duty.**"—NAPIER *v.* SHOLL, 1904 S.A.L.R. 73. [*South Australia.*]

"**Owner.**"—GRAHAM *v.* JONES, 1905 V.L.R. 645; 27 A.L.T. 83; 11 A.L.R. 384. [*Victoria.*] ELDER *v.* BATHAM, 7 N.Z. Gaz. L.R. 360, 518. [*New Zealand.*]

"**Passenger.**"—DONOHOE *v.* AFALEE, 22 W.N. 23. [*New South Wales.*]

"**Personal baggage.**"—DONOHOE *v.* AFALEE, 22 W.N. 23. [*New South Wales.*]

"**Place.**"—SHERWOOD *v.* PRIOR, 22 W.N. 191. [*New South Wales.*] CAWSEY *v.* DAVIDSON, 27 A.L.T. 121: 11 A.L.R. 446. [*Victoria.*] HERBERT & CO. *v.* MAYOR, &C. OF LAWRENCE 7 N.Z. Gaz. L.R. 1. [*New Zealand.*]

"**Posthumous.**"—*In re* GOODWIN 4 S.R. 682; 21 W.N. 222. [*New South Wales.*]

"**Practising.**"—R. *v.* KENDALL; *In re* BATCHELOR 1905 V.L.R. 366 579; 26 A.L.T. 218; 27 A.L.T. 22; 11 A.L.R. 220, 316. [*Victoria.*

"**Proceeding.**"—NINNIS *v.* MILLER, 1905 V.L.R. 669; 27 A.L.T. 125; 11 A.L.R. 479. [*Victoria.*]

"**Property.**"—*In the estate of* JOSEPH, 7 N.Z. Gaz. L.R. 643. [*New Zealand.*]

"**Public works.**"—RIDDIFORD *v.* LOWER HUTT, MAYOR, &C., OF, 24 N.Z.L.R. 54. [*New Zealand.*]

"**Real property.**"—*In the estate of* JOSEPH, 7 N.Z. Gaz. L.R. 643. [*New Zealand.*]

"**Rents.**"—*In the will of* BAKER; BAKER *v.* HUTCHINSON, 1905 V.L.R. 416; 26 A.L.T. 222; 11 A.L.R. 177. [*Victoria.*]

"**Repaid.**"—*See* "*Expenses incurred*," *supra.*

"**Repairing.**"—MCSAVENY *v.* SMITH, 24 N.Z.L.R. 245. [*New Zealand.*]

"**Sale by retail.**"—YOUNG *v.* HALL, 1905 S.R. (Q.) 151; Q.W.N. 57. [*Queensland.*]

"**Securities.**"—*In re* MORT, 4 S.R. 760; 21 W.N. 259. [*New South Wales.*] BANK OF NEW ZEALAND *v.* ASSETS REALISATION BOARD, 7 N.Z. Gaz. L.R. 483. [*New Zealand.*]

"**Settlement.**" — JACK *v.* SMAIL, 2 C.L.R. 684; 11 A.L.R. 372. [*Victoria.*]

"**Shop.**"—YOUNG *v.* HALL, 1905 S.R. (Q.) 151; Q.W.N. 57. [*Queensland.*]

"**Sold.**"—MILDURA IRRIGATION TRUST *v.* WILLOUGHBY, 1905 V.L.R. 90; 26 A.L.T. 196; 11 A.L.R. 102. [*Victoria.*]

"**Through.**"—BEETHAM *v.* TREMEARNE, 2 C.L.R. 582; 1905 S.R. (Q.) 93; Q.W.N. 36. [*Queensland.*]

"**Week.**"—BISHOP *v.* HOOPER, 1905 V.L.R. 220; 26 A.L.T. 157; 11 A.L.R. 64. [*Victoria.*]

"**Work.**"—HAYNES *v.* MCKILLOP, 7 N.Z. Gaz. L.R. 478. [*New Zealand.*]

WORKERS' COMPENSATION FOR ACCIDENTS.

See MASTER AND SERVANT.

APPENDIX I.

CASES FOLLOWED, NOT FOLLOWED, OVERRULED, &c

Aff.—Affirmed.
App.—Approved.
Appl.—Applied.
C.—Considered.
D.—Distinguished.
Ex.—Explained.
F.—Followed.
NF.—Not followed.
O.—Overruled.
Q.—Questioned.
R.—Reversed.
V.—Varied.

Abrath *v.* **N.E. Railway Co.,** 11 Q.B.D. 440; 11 A.C. 247. **(F.)**
Crowley *v.* Glissan, 2 C.L.R. 744.

Addison *v.* **Mayor, &c. of Preston,** 21 L.J.C.P. 146. **(D.)**
Wairau Hospital, &c., Board. *v.* Picton Hospital, &c., Board, 24 N.Z.L.R. 45.

Albion Park Agricultural, &c. Association, *In re,* 19 W.N. (N.S.W.) 237. **(D.)**
Re Burge's Charity, 22 W.N. (N.S.W.) 175.

Aldrich *v.* **Griffin Iron Co.,** [1904] 2 K.B. 850. **(D.)**
Watson *v.* Huddart, Parker & Co., 7 N.Z. Gaz. L.R. 467.

Alexander, *Re,* 2 C.L.L.R. 189. **(F.)**
Re Craven, 2 C.L.L.R. 202.

Alexander *v.* **Steinhardt, Walker & Co.,** [1903] 2 K.B. 208. **(F.)**
Robinson *v.* Podosky, [1905] S.R. (Q.) 118; Q.W.N. 47.

Allan *v.* **Alldridge,** 5 Beav. 401. **(C.)**
Sharp *v.* Southern, 1905 V.L.R. 223; 26 A.L.T. 231; 11 A.L.R. 162.

Allen *v.* **Flood,** [1898] A.C. 1. **(C.)**
Heggie *v.* Brisbane Shipwrights' Union, 1905 S.R. (Q.) 155; Q.W.N. 62.

Allen *v.* **L. & S. W. Ry. Co.,** L.R. 6 Q.B. 65. **(F.)**
Hamilton *v.* Railway Commissioners, 5 S.R. (N.S.W.) 267; 22 W.N. 69.

Amhurst Tailings Co. *v.* **Tompsitt,** 5 A.L.R. (C.N.) 23. **(C.)**
Clarke *v.* Loddon Dredging Co., 11 A.L.R. (C.N.) 63.

Anderson *v.* **Ah Nam,** 4 S.R. (N.S.W.) 492; 21 W.N. 179. **(O.)**
Quan Yick *v.* Hinds, 2 C.L.R. 345; 11 A.L.R. 223.

Anglo-Continental Corporation of Western Australia (F.)
In re Rockhampton Prospecting Co., 1905 S.R. (Q.) 64; Q.W.N. 15.

Anthoness *v.* **Anderson,** 14 V.L.R. 127; 9 A.L.T. 175. **(F.)**
Jack *v.* Smail, 2 C.L.R. 684; 11 A.L.R. 372.

Arapiles (President of) *v.* **Board of Land and Works,** 10 A.L.R. 165. **(R.)**
Arapiles (President of) *v.* Board of Land and Works, 11 A.L.R. 8.

Armitage, *In re,* [1893] 3 Ch. 337. **(F.)**
In re Young, 5 S.R. (N.S.W.) 394; 22 W.N. 135.

Artizans and Labourers' Improvement Act, *In re,* 14 Ch. D. 624. **(F.)**
Re Blair, 22 W.N. (N.S.W.) 97.

Ashcroft *v.* **Cable,** 6 N.Z. Gaz. L.R. 334. **(NF.)**
Harbour *v.* Fergusson, 7 N.Z. Gaz. L.R. 366.

Attorney-General *v.* **Down,** 1905 S.R. (Q.) 16; Q.W.N. 9. **(V.)**
Down *v.* Attorney-General of Queensland, 2 C.L.R. 639; 11 A.L.R. 288.

Attorney-General *v.* **Edgely,** 9 L.R. (N.S.W.) 157; 4 W.N. 180. **(Appr.)**
Quan Yick *v.* Hinds, 2 C.L.R. 345; 11 A.L.R. 223.

Attorney-General *v.* **Mayor, &c. of Melbourne,** 27 V.L.R. 568; 23 A.L.T. 123; 8 A.L.R. 23. **(F.)**
Attorney-General *v.* Mayor, &c. of Melbourne, 27 A.L.T. 116; 11 A.L.R. 504.

Austen, *Ex parte,* 18 L.R. (N.S.W.) 216. **(D.)**
Ex parte Reed, 5 S.R. (N.S.W.) 328; 22 W.N. 78.

Australian Joint Stock Bank *v.* **Bailey,** 18 L.R. (N.S.W.) 103; 13 W.N. 184. **(D).**
Deane *v.* City Bank of Sydney, 2 C.L.R. 198; 11 A.L.R. 1.

Austria (Emperor of) *v.* **Day,** 3 De G. F. & J. 217. **(Ex.)**
Potter *v.* Broken Hill Proprietary Co., 1905 V.L.R. 612; 27 A.L.T. 74; 11 A.L.R. 357.

Ayers *v.* **Buckeridge,** [1902] 1 K.B. 57. **(F.)**
Williams *v.* Dunedin (Mayor of), 7 N.Z. Gaz. L.R. 326.

Bacon *v.* **Bacon,** 5 Ves. 331. **(D.)**
Equity Trustees, &c. Co. *v.* Fenwick, 1905 V.L.R. 154; 26 A.L.T. 137; 11 A.L.R. 15.

Bahia and San Francisco Ry. Co., *Re,* L.R. 3 Q.B. 584. **(F.)**
Daily Telegraph Newspaper Co. *v.* Cohen, 5 S.R. (N.S.W.) 520; 22 W.N. 172.

Bain *v.* **Fothergill,** L.R. 7 H.L. 158; 43 L.J. Ex. 245. **(C.)**
Stewart *v.* Taylor, 24 N.Z.L.R. 785; 7 Gaz. L.R. 455.

Baker *v.* **Johnson,** 21 N.Z.L.R. 268; 4 Gaz. L.R. 270. **(C.)**
Newall *v.* Johnson, 7 N.Z. Gaz. L.R. 85.

Ball, *Re,* 8 Q.L.J. 110. **(F.)**
In re Cocking, 1905 Q.W.N. 20.

Ballard *v.* **Shutt,** 15 Ch. D. 122. **(D.)**
Glenn *v.* Board of Land and Works, 1905 V.L.R. 518; 26 A.L.T. 245; 11 A.L.R. 175.

Barker *v.* **Edger,** [1898] A.C. 748. **(F.)**
In re Painters' Award, 1905 A.R. 33.

Barker *v.* **Palmer,** 8 Q.B.D. 9. **(F.)**
Moderana *v.* Backhouse, 7 W.A.L.R. 39.

Bartlett *v.* **Tutton,** [1902] 1 K.B. 72. **(F.)**
Gernhoeffer *v.* Whiteside, 7 N.Z. Gaz. L.R. 325.

Barwick *v.* **English Joint Stock Bank,** L.R. 2 Ex. 259. **(Appr.)**
Brown *v.* Citizens' Life Assurance Co., 4 S.R. (N.S.W.) 642.

Batchelor, *In re,* 1905 V.L.R. 366; 26 A.L.T. 218; 11 A.L.R. 220. **(R.)**
In re Batchelor, 1905 V.L.R. 579; 27 A.L.T. 22; 11 A.L.R. 316.

Baume *v.* **The Commonwealth,** 22 W.N. (N.S.W.) 5. **(R.)**
Commonwealth *v.* Baume, 2 C.L.R. 405; 11 A.L.R. 124.

Beath, Schiess & Co., *Ex parte,* 1905 V.L.R. 51; 26 A.L.T. 103. **(Aff.)**
Dobson *v.* Beath, Scheiss & Co., 2 C.L.R. 277; 11 A.L.R. 92.

Beetham *v.* **Tremearne,** 1905 S.R. (Q.) 93; Q.W.N. 36. **(R.)**
Beetham *v.* Tremearne, 2 C.L.R. 582.

Bell *v.* **Culling,** 23 N.Z.L.R. 791. **(Aff.)**
Bell *v.* Culling, 24 N.Z.L.R. 501; 7 Gaz. L.R. 165.

Bellamy *v.* **Debenham,** [1891] 1 Ch. 412. **(F.)**
Pearce *v.* Stevens, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176.

Bevan *v.* **Crawshaw,** [1902] 1 K.B. 25. **(F.)**
Napier *v.* R., 7 N.Z. Gaz. L.R. 362.

Birch, *Re,* 16 W.N. 135. **(F.)**
In the estate of Bremner, 22 W.N. (N.S.W.) 108.

Birt, *In re,* L.R. 2 P. & D. 214. **(F.)**
In the will of Bull, 26 A.L.T. 123.

Boggs *v.* **Hickie,** 2 S.C.R. 211. **(F.)**
O'Brien *v.* Hains, 5 S.R. (N.S.W.) 419; 22 W.N. 136.

Boileau *v.* **Rutlin,** 2 Ex. 665. **(F.)**
Austin *v.* Austin, 1905 V.L.R. 564; 27 A.L.T. 17, 43; 11 A.L.R. 337.

Bouch *v.* **Sproule,** 12 A.C. 385. **(F.)**
In re WOOLCOTT, 1905 V.L.R. 599; 27 A.L.T. 19; 11 A.L.R. 343. *In re* Young, 5 S.R. (N.S.W.) 394; 22 W.N. 135.

Bowe's Estate, *Re,* 10 Jur. N.S. 817. **(F.)**
Re Raphael, 5 S.R. (N.S.W.) 12; 22 W.N. 17.

Brewer *v.* **Broadwood,** 22 Ch. D. 105, 109. **(F.)**
Pearce *v.* Stevens, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176.

British Mutual Banking Co. *v.* **Charnwood Forest Ry. Co.,** 18 Q.B.D. 714. **(F.)**
Lysaght Bros. & Co. *v.* Falk, 2 C.L.R. 421; 11 A.L.R. 149.

British South Africa Co. *v.* **Companhia de Mocambique,** [1893] A.C. 602. **(F.)**
Potter *v.* Broken Hill Proprietary Co., 1905 V.L.R. 612; 27 A.L.T. 74; 11 A.L.R. 357.

Broad, *Re,* N.Z.L.R. 1 S.C. 79. **(F.)**
Wairau Hospital, &c. Board *v.* Picton Hospital, &c., Board, 24 N.Z.L.R. 45.

Bromage *v.* **Prosser,** 4 B. & C. 247. **(D.)**
Godhard *v.* James Inglis & Co., 2 C. L.R. 78.

Brooks, *Re,* 21 W.N. (N.S.W.) 4. **(F.)**
In the estate of Mattson, 22 W.N. (N.S.W.) 159.

Brown *v.* **Lizars,** 1905 V.L.R. 165; 26 A.L.T. 159; 11 A.L.R. 42. **(R.)**
Brown *v.* Lizars, 11 A.L.R. 345.
(C.) Tonkin *v.* Jumbunna Coal Co., 27 A.L.T. 99; 11 A.L.R. 454.

Burkett *v.* **Spray,** 1 R. & M. 113. **(F.)**
In the will of Blake; O'Neil *v.* Hart, 1905 V.L.R. 306; 27 A.L.T. 12; 11 A.L.R. 258.

Byrne *v.* **Byrne,** 10 W.N. (N.S.W.) 143. **(D.)**
Lundberg *v.* Lundberg, 22 W.N. (N.S.W.) 98.

Cadman *v.* **Cadman,** 33 Ch. D. 397. **(D.)**
Tognetti *v.* Tognetti, 22 W.N. (N.S.W.) 212.

Callander *v.* **Howard,** 10 C.B. 290. **(F.)**
Harris *v.* Sydney Glass and Tile Co., 2 C.L.R. 227; 11 A.L.R. 49.

Caraher, *In the will of,* 5 S.R. (N.S.W.) 63; 21 W.N. 213. **(R.)**
Caraher *v.* Lloyd, 2 C.L.R. 480; 11 A.L.R. 400.

Cardross, Settlement, *In re,* 7 Ch. D. 728. **(F.)**
In re Mears, 5 S.R. (N.S.W.) 140; 22 W.N. 49.

Cartlidge *v.* **Cartlidge,** 2 S. & T. 567. **(F.)**
Moyse *v.* Moyse, 22 W.N. (N.S.W.) 178.

Carvill and McKean, *In re,* 1 Mor. 150. **(NF.)**
Allen, *In re,* 5 S.R. (N.S.W.) 55; 22 W.N. 47.

Catling, *In re,* [1890] W.N. 75. **(F.)**
In re Goodwin, 4 S.R. (N.S.W.) 682; 21 W.N. 222.

Chevalier, *Re,* 29 V.L.R. 326; 25 A.L.T. 78; 9 A.L.R. 185. **(F.)**
Wallis, *In the will of,* 1905 V.L.R. 671; 27 A.L.T. 38; 11 A.L.R. 315.

Chew *v.* **Holroyd,** 22 L.J. Ex. 95. **(F.)**
Crowley *v.* Andresen, 7 N.Z. Gaz. L.R. 453.

Chisholm *v.* **Doulton,** 22 Q.B.D. 736. **(D.)**
Walker *v.* Chapman, 1904 S.R. (Q.) 330; Q.W.N. 83.

Christie *v.* **Ah Foo,** 29 V.L.R. 533. **(F.)**
Mann *v.* Ah On, 7 W.A.L.R. 182.

City Bank of Sydney *v.* **Deane,** 4 S.R. (N.S.W.) 182. **(Aff.)**
Deane *v.* City Bank of Sydney, 2 C.L.R. 198; 11 A.L.R. 1.

Clabbon, *In re* [1904] 2 Ch. 465. **(F.)**
In the estate of Mattson, 22 W.N. (N.S.W.) 159.

Clough, *In re,* 31 Ch. D. 324. **(F.)**
Walker *v.* Creaven, 7 N.Z. Gaz. L.R. 435; 8 Gaz. L.R. 113.

Coleman, *In re,* 5 S.R. (N.S.W.) 272; 22 W.N. 79.
See In re Coleman, 2 C.L.R. 834; 11 A.L.R. 243.

Commissioners for Special Purposes of Income Tax *v.* **Pemsel,** [1891] A.C. 531. **(C.)**
Hamilton *v.* Bank of New Zealand, 24 N.Z.L.R. 109; 7 Gaz. L.R. 277.

Coolgardie Consolidated Coal Mines, Re, 76 L.T. 269. **(F.)**
In re Wickham & Bullock Island Coal Co., 5 S.R. (N.S.W.) 365; 22 W.N. 109.

Cowley *v.* **Commissioners of Inland Revenue,** [1899] A.C. 198. **[F.)**
In re Wiseman, 1905 S.R. (Q.] 53; Q.W.N. 22.

Cox *v.* **English, Scottish and Australian Bank,** [1905] A.C. 168. **(F.)**
Crowley *v.* Glissan, 2 C.L.R. 744.

Coyle *v.* **G.N. Ry. Co. of Ireland,** 20 L.R. Ir. 409. **(F.)**
Commissioner of Railways *v.* Leahy, 2 C.L.R. 54.

Cremar *v.* **Cremar,** 12 V.L.R. 738; 8 A.L.T. 83. **(F.)**
Read *v.* Read, 1905 V.L.R. 424; 27 A.L.T. 8; 11 A.L.R. 332.

Crown (The) *v.* **Thomas,** 6 W.A.L.R. 91. **(V.)**
Thomas *v.* The Crown, 2 C.L.R. 127.

Crowley *v.* **Union Bank,** 29 V.L.R. 385. **(F.)**
O'Neil *v.* Hart, 1905 V.L.R. 259.

Cruickshank *v.* **Moss,** 8 L.T. (N.S.) 439. **(F.)**
O'Neil *v.* Hart, 1905 V.L.R. 259.

Daily Telegraph Newspaper Co. *v.* **McLaughlin,** 1 C.L.R. 479; [1904] A.C. 776. **(F.)**
Johansen *v.* City Mutual Life Assurance Society, 2 C.L.R. 186; 11 A.L.R. 6.

Dalgliesh *v.* **Lowther,** [1899] 2 Q.B. 590. **(F.)**
Seddon *v.* Taylor, 7 N.Z. Gaz. L.R. 389.

Danby *v.* **Coutts & Co.,** 29 Ch. D. 500. **[D.)**
Fell *v.* Puponga Coal &c., Co., 24 N.Z. L.R. 758.

Darbyshire *v.* **Darbyshire,** 1905 V.L.R. 239; 26 A.L.T. 128; 11 A.L.R. 14. **(R.)**
Darbyshire *v.* Darbyshire, 2 C.L.R. 787; 11 A.L.R. 417.

Davis *v.* **Davis,** 4 S.R. (N.S.W.) 506; 21 W.N. 145. **(R.)**
Davis *v.* Davis, 2 C.L.R. 179; 11 A.L.R. 29.

Davis *v.* **Trehearne,** 6 A.C. 460. **(F.)**
Blackball Coal Co. *v.* Shrives, 7 N.Z. Gaz. L.R. 35.

De la Viesca *v.* **Lubbock,** 10 Sim. 629. **(F.)**
In re Maher, 1905 Q.W.N. 58.

De la Warr's (Earl) Estates, *In re,* 16 Ch. D. 587. **(F.)**
In the will of Blake; O'Neil *v.* Hart; 1905 V.L.R. 306; 27 A.L.T. 12; 11 A.L.R. 258.

De Witte *v.* **Palin,** L.R. 14 Eq. 251. **(F.)**
Tognetti *v.* Tognetti, 22 W.N. (N.S.W.) 212.

Dickenson's Application, *In re,* 1905 V.L.R. 235; 26 A.L.T. 124; 11 A.L.R. 20. **(Aff.)**
Potter *v.* Dickenson, 2 C.L.R. 668.

Dilworth, *In re,* 14 N.Z.L.R. C.A. 729. **(F.)**
In re Deceased Persons' Estates Duties Act, 8 N.Z. Gaz. L.R. 46.

Dobson, *In re,* 1905 V.L.R. 51; 26 A.L.T. 103. **(Aff.)**
Dobson *v.* Beath, Scheiss & Co., 2 C.L.R. 277; 11 A.L.R. 92.

Doe *d.* **Calkin** *v.* **Tomkinson,** 2 M. & S. 165. **(D.)**
Caraher *v.* Lloyd, 2 C.L.R. 480; 11 A.L.R. 400.

Doherty v. Allmann, 3 A.C. 709. (F.)
Holden *v.* Black, 1905 V.L.R. 326; 26 A.L.T. 205; 11 A.L.R. 200; *But see* S.C. 2 C.L.R. 768; 11 A.L.R. 393.

Dohrmann, *Re*, 7 V.L.R. (L.) 18. (NF.)
In the will of Wallis, 1905 V.L.R. 671; 27 A.L.T. 38; 11 A.L.R. 315.

Dowling v. Victorian Railway Commissioners, 6 A.L.R. 98. (C.)
Clarke *v.* Loddon Gold Dredging Co., 11 A.L.R. (C.N.) 63.

Duke v. Wisden, 77 L.T. 67. (F.)
National Starch Co. *v.* Robert Harper & Co., 27 A.L.T. 35; 11 A.L.R. 335.

Edmunds v. James, [1892] 1 Q.B. 18. (F.)
McRobie *v.* Bowden, 24 N.Z.L.R. 10; 7 Gaz. L.R. 118.

Egerton v. Massey, 3 C.B. N.S. 338. (F.)
Caraher *v.* Lloyd, 2 C.L.R. 480; 11 A.L.R. 400.

Ellenborough, *In re*, [1903] 1 Ch. 697. (D.)
Caraher *v.* Lloyd, 2 C.L.R. 480; 11 A.L.R. 400.

Elliott v. Garnet, [1902] 1 K.B. 870. (F.)
Sedden *v.* Taylor, 7 N.Z. Gaz. L.R. 389.

Equity Trustees, &c. Co. v. Tanswell, 28 V.L.R. 688; 24 A.L.T. 214. (C.)
McCrindle *v.* Australian Producers', &c. Union, 1905 V.L.R. 575; 27 A.L.T. 81; 11 A.L.R. 385.

Erichsen v. Last, 7 Q.B.D. 12; 8 Q.B.D. 414. (D.)
Eastern Extension, &c., Telegraph Co. *v.* Commissioner of Taxes, 24 N.Z. L.R. 308; 7 Gaz. L.R. 123.

Erskine v. Erskine, 21 L.R. (N.S.W.) D. 1. (D.)
Lundberg *v.* Lundberg, 22 W.N. (N.S.W.) 98.

Evans, *In re*, 15 L.C.C. 41. (F.)
McKeon *v.* Heywood, 15 L.C.C. 222.

Evans v. Field, 8 L.J. N.S. Eq. 264. (F.)
In re Scarfe, 1904 S.A.L.R. 15.

Exchange Drapery Co., *In re*, 38 Ch. D. 172. (F.)
In re Wood & Sons, 7 N.Z. Gaz. L.R. 486.

Faber v. Dwyer, 3 N.Z. Gaz. L.R. 471. (NF.)
McRobie *v.* Bowden, 24 N.Z.L.R. 10; 7 Gaz. L.R. 118.

Fairbairn v. Stead, 7 N.Z. Gaz. L.R. 330. (F.)
Crowley *v.* Andresen, 7 N.Z. Gaz. L.R. 453.

Falk v. Lysaght Bros. & Co., 4 S.R. (N.S.W.) 665; 21 W.N. 219; (R.)
Lysaght Bros. & Co. *v.* Falk, 2 C.L.R. 421; 11 A.L.R. 149.

Flureau v. Thornhill, 2 W. Bl. 1078. (C.)
Stewart *v.* Taylor, 24 N.Z.L.R. 785; 7 Gaz. L.R. 455.

Ford v. Ryan, 4 Ir. Ch. R. 342. (F.)
Mutual Life Insurance Co. of New York *v.* Pechotsch, 2 C.L.R. 823; 11 A.L.R. 467.

Forder v. Handyside & Co., 45 L.J. Ex. 809. (F.)
Eastern Extension, &c. Telegraph Co. *v.* Commissioner of Taxes, 24 N.Z. L.R. 308; 7 Gaz. L.R. 123.

Forrer v. Nash, 35 Beav. 167, 171. (F.)
Pearce *v.* Stevens, 24 N.Z.L.R. 357; 7 Gaz. L.R. 176.

Fosbery, *Ex parte*, 1 C.L.R. 546; 4 S.R. (N.S.W.) 74; 21 W.N. 31. (F.)
McLaughlin *v.* Westgarth, 4 S.R. (N.S.W.) 660; 21 W.N. 225.

Foster v. Dawber, 6 Ex. 839; 20 L.J. Ex. 385. (D.)
Topliss *v.* Cohr, 24 N.Z.L.R. 540.

Fox v. Fox, L.R. 19 Eq. 286. (F.)
Brebner *v.* O'Meara, 8 N.Z. Gaz. L.R. 74.

Frater v. Howe, 1 N.Z. Jur. (Mining Cases) 30. (C.)
Ewing *v.* Scandinavian Water-Race Co., 24 N.Z.L.R. 271; 7 Gaz. L.R. 48.

Friend v. Curtis, 1891 Brisbane Courier, Feb. 19. (F.)
Reid *v.* Smith, 1905 S.R. (Q.) 130; Q.W.N. 48.

Fry & Co. v. Raggio, 40 W.R. 120. (F.)
Mayers & Co. *v.* Johnson & Co., 1905 Q.W.N. 39.

Fulton v. Andrew, L.R. 7 H.L. 448. (F.)
Benjamin *v.* Stewart, 1905 S.R. (Q.) 35; Q.W.N. 12.

Fyfe's Case, L.R. 4 Ch. 768. (F.)
In re Colonial Finance, &c. Corporation 5 S.R. (N.S.W.) 506; 22 W.N. 179.

Gaffin, *Re*, 17 L.R. (N.S.W.) B. & P. 51; 6 B.C. 78. (NF.)
Re Hook, 22 W.N. 45.

Gardner v. Francis, 24 N.Z.L.R. 544; 7 Gaz. L.R. 68. (F.)
Re Luxton, 24 N.Z.L.R. 687; 7 Gaz. L.R. 468.

General Accident Assurance Corporation, *In re*, [1904] 1 Ch. 147. (F.)
Re Clarke and Solomons' Agreements, Trusts, 5 S.R. (N.S.W.) 498; 22 W.N. 165.

George v. Mutual Australian Provident Society, 4 N.Z.L.R. S.C. 165. (F.)
Penlington *v.* Bell, 24 N.Z.L.R. 551; 7 Gaz. L.R. 114.

Giblan v. National Amalgamated Labourers' Union, [1903] 2 K.B. 600. (F.)
Heggie *v.* Brisbane Shipwrights' Union, 1905 S.R. (Q.) 155; Q.W.N. 62.

Glamorgan Coal Co. v. South Wales Miners' Federation, [1903] 2 K.B. 545. (C.)
Heggie *v.* Brisbane Shipwrights' Union, 1905 S.R. (Q.) 155; Q.W.N. 62.

Glissan v. Crowley, 5 S.R. (N.S.W.) 219; 22 W.N. 100. (R.)
Crowley *v.* Glissan, 2 C.L.R. 744.

Godfrey *v.* **Commissioner of Stamps,** 23 N.Z. L.R. 937 ; 6 Gaz. L.R. 430. (**O.**)
Douglas *v.* Commissioner of Stamps, 24 N.Z.L.R. 716 ; 7 Gaz. L.R. 188.

Godhard *v.* **James Inglis & Co.,** 4 S.R. (N.S.W.) 327 ; 21 W.N. 134. (**R.**)
Godhard *v.* James Inglis & Co., 2 C.L.R. 78.

Goode *v.* **Bechtel,** 6 W.A.L.R. 86. (**R.**)
Goode *v.* Bechtel, 2 C.L.R. 121.

Gregson's Trusts, *In re,* 2 Hem. & M. 504. (**NF.**)
In re Goodwin, 4 S.R. (N.S.W.) 682 ; 22 W.N. 222.

Guardhouse *v.* **Blackburn,** L.R. 1 P. & D. 109. (**F.**)
Benjamin *v.* Stewart, 1905 S.R. (Q.) 35 ; Q.W.N. 12.

Hall, *Re,* 17 L.R. (N.S.W.) B. & P. 12. (**F.**)
In the estate of Bremner, 22 W.N. (N.S.W.) 108.

Hall, *In re,* 26 V.L.R. 555 ; 22 A.L.T. 120. (**C.**)
In the will of McConveill, 27 A.L.T. 84 ; 11 A.L.R. 303.

Hall *v.* **Cox,** [1889] 1 Q.B. 198. (**D.**)
Arthur *v.* Hines, 1905 V.L.R. 695 ; 27 A.L.T. 91 ; 11 A.L.R. 431.

Halstead United Charities, *In re,* L.R. 20 Eq. 48. (**F.**)
Re Blair, 22 W.N. (N.S.W.) 97.

Hamilton, *In re,* 31 Ch. D. 291. (**D.**)
Tognetti *v.* Tognetti, 22 W.N. (N.S.W.) 212.

Hamilton *v.* **Tighe,** [1898] 1 I.R. 123. (**F.**)
In the will of Blake ; O'Neil *v.* Hart. 1905 V.L.R. 306 ; 27 A.L.T. 12 ; 11 A.L.R. 258.

Hancock *v.* **Somerville,** Higgins' Digest, 237. (**F.**)
Welsbach Light Co. *v.* Lascelles, 27 A.L.T. 131 ; 11 A.L.R. 476.

Hancock *v.* **Watson,** [1902] A.C. 14. (**C.**)
Smidmore *v.* Smidmore, 5 S.R. 492 ; 22 W.N. 141.

Handley *v.* **London, Edinburgh and Glasgow Assurance Co.,** [1902] 1 K.B. 350. (**F.**)
Brown *v.* Lizars, 11 A.L.R. 345.

Hardy *v.* **Adams,** 3 N.Z. Gaz. L.R. S.C. 120. (**F.**)
Turkington *v.* Turkington, 7 N.Z. Gaz. L.R. 92, 497.

Harris *v.* **Sydney Glass & File Co.,** 4 S.R. (N.S.W.) 454 ; 21 W.N. 186. (**Aff.**)
Harris *v.* Sydney Glass & Tile Co., 2 C.L.R. 227 ; 11 A.L.R. 49.

Healey *v.* **Egan,** 5 S.R. (N.S.W.) 107 ; 22 W.N. 12. (**C.**)
Perrottet *v.* McKinnon, 15 L.C.C. 308.

Healy, *Ex parte,* 3 S.R. (N.S.W.) 14 ; 20 W.N. 12. (**F.**)
Walker *v.* Chapman, 1904 S.R. (Q.) 330 ; Q.W.N. 83.

Henderson *v.* **Allan,** 1 N.Z. Gaz. L.R. 113, 115. (**D.**)
Mickleson *v.* Small, 24 N.Z.L.R. 831 ; 7 Gaz. L.R. 452.

Henderson *v.* **Wangapeka Gold Dredging Co.,** 23 N.Z.L.R. 833. (**D.**)
Drummey *v.* Kenny, 24 N.Z.L.R. 792 ; 7 Gaz. L.R. 428.

Henty *v.* **R.,** [1896] A.C. 567. (**F.**)
In re Wiseman, 1905 S.R. (Q.) 53 ; Q.W.N. 22.

Heward *v.* **R.,** 1905 V.L.R. 548 ; 27 A.L.T. 50 ; 11 A.L.R. 313. (**R.**)
Heward *v.* R., 11 A.L.R. 494.

Higgins *v.* **Ede,** 15 L.J. Ex. 1. (**D.**)
Willis *v.* Doyle, 22 W.N. (N.S.W.) 33.

Hodges *v.* **Glass,** O.B. & F. (S.C.) 66. (**F.**)
MacIntosh *v.* Cohen, 24 N.Z.L.R. 625.

Holden *v.* **Black,** 1905 V.L.R. 326 ; 26 A.L.T. 205 ; 11 A.L.R. 200. (**R.**)
Holden *v.* Black, 2 C.L.R. 768 ; 11 A.L.R. 393.

Holland *v.* **Hodgson,** L.R. 7 C.P. 328, 334. (**F.**)
Reid *v.* Smith, 1905 S.R. (Q.) 130 ; Q.W.N. 48.

Holmes, *In re,* 15 V.L.R. 734. (**F.**)
In the will of Adams, 7 N.Z. Gaz. L.R. 660.

Hood Barrs *v.* **Heriot,** [1896] A.C. 174. (**F.**)
Paterson *v.* McNaghten, 2 C.L.R. 615 ; 11 A.L.R. 263.

Hooper *v.* **Mayor of Exeter,** 56 L.J.Q.B. 407. (**N.F.**)
R. *v.* Atkinson, 1905 V.L.R. 698 ; 27 A.L.T. 86 ; 11 A.L.R. 412.

Hope *v.* **Warburton,** [1892] 2 Q.B. 134 ; 61 L.J.M.C. 147 ; 56 J.P. 328. (**F.**)
McRobie *v.* Bowden, 24 N.Z.L.R. 10 ; 7 Gaz. L.R. 118.

Horsfall *v.* **Swan Bank, & c., Co.,** 17 W.R. 119. (**C.**)
Clarke *v.* Loddon Gold Dredging Co., 11 A.L.R. (C.N.) 63.

Hose *v.* **Brown,** 7 Q.L.J. (N.C.) 75. (**F.**)
Reid *v.* Smith, 1905 S.R. (Q.) 130 ; Q.W.N. 48.

How *v.* **London & N.W. Ry. Co.,** [1892] 1 Q.B. 391. (**D.**)
Tonkin *v.* Jumbunna Coal Co., 27 A.L.T. 99 ; 11 A.L.R. 454.

Howard *v.* **Braithwaite,** 1 V. & B. 202. (**F.**)
Lysaght Bros. & Co. *v.* Falk, 2 C.L.R. 421 ; 11 A.L.R. 149.

Howard *v.* **Digby,** 2 Cl. & F. 663. (**F.**)
In the estate of Mattson, 22 W.N. (N.S.W.) 159.

Howard *v.* **Shaw,** 8 M. & W. 118. (**F.**)
Walker *v.* Creaven, 7 N.Z. Gaz. L.R. 435 ; 8 Gaz. L.R. 113.

Howe *v.* **Earl of Dartmouth,** 7 Ves. 137. **(F.)**
In re Scarfe, 1904 S.A.L.R. 15.

Humphries & Co. *v.* **Taylor Drug Co.,** 39 Ch. D. 693. **(C.)**
National Starch Co. *v.* Robert Harper & Co., 27 A.L.T. 35; 11 A.L.R. 335.

Hyde *v.* **Hyde,** 59 L.T. 523. **(F.)**
Bagnall *v.* Bagnall, 7 N.Z. Gaz. L.R. 454.

Ingle *v.* **Richards,** 28 Beav. 366. **(F.)**
Elliott *v.* Campbell, 1905 V.L.R. 596; 27 A.L.T. 69, 128; 11 A.L.R. 331.

Irving *v.* **Baker,** 15 L.J.Q.B. 322. **(D.)**
Willis *v.* Doyle, 22 W.N. (N.S.W.) 33.

Jack, *In re,* 1905 V.L.R. 275; 26 A.L.T. 172; 11 A.L.R. 101. **(Part Aff., Part R.)**
Jack *v.* Smail, 2 C.L.R. 684; 11 A.L.R. 372.

Jenkins and H. E. Randall & Co.'s Contract, *In re,* [1903] 2 Ch. 362. **(F.)**
Penlington *v.* Bell, 24 N.Z.L.R. 551; 7 Gaz. L.R. 114.

Jenkins *v.* **Coomber,** [1898] 2 Q.B. 168. **(F.)**
Freedman *v.* Dan Che Lin, 7 W.A.L.R. 179.

Joe Quick *v.* **Cox,** 21 N.Z.L.R. 584. **(D.)**
Lee Sun *v.* Conolly, 24 N.Z.L.R. 553; 7 Gaz. L.R. 494.

Johansen *v.* **City Mutual Life Assurance Society,** 1904 S.R. (Q.) 288. *See* Johansen *v.* City Mutual Life Assurance Society, 2 C.L.R. 186; 11 A.L.R. 6.

Kane *v.* **Rugg,** 4 N.Z. Gaz. L.R. 365. **(D.)**
Challenger *v.* Cawkwell, 8 N.Z. Gaz. L.R. 86.

Kelly *v.* **R.,** 27 V.L.R. 522; 23 A.L.T. 214. **(F.)**
R. *v.* Atkinson, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412.

Kennedy, *In re,* 9 N.Z.L.R. S.C. 305. **(F.)**
In the will of Adams, 7 N.Z. Gaz. L.R. 660.

Kidman *v.* **National Mutual Life Association,** 7 W.A.L.R. 64. **(R.)**
National Mutual Life Association *v.* Kidman, 11 A.L.R. 461.

La Cite de Montreal *v.* **Les Ecclesiastiques du Seminaire de St. Sulpice de Montreal,** 14 A.C. 660. **(F.)**
Norton *v.* Taylor, 2 C.L.R. 291.

Lassence *v.* **Tierney,** 1 Mac. & G. 551. **(C.)**
Smidmore *v.* Smidmore, 5 S.R. (N.S.W.) 492; 22 W.N. 141.

Laurenson *v.* **Count Bismarck G.M. Co.,** 4 V.L.R. (L.) 83. **(C.)**
Neville *v.* Lord Nelson G.M. Co., 1905 V.L.R. 242; 26 A.L.T. 160; 11 A.L.R. 83.

Leahy, *Ex parte,* 4 S.R. (N.S.W.) 401; 21 W.N. 129. **(R.)**
Clough *v.* Leahy, 2 C.L.R. 139; 11 A.L.R. 32.

Leahy *v.* **Commissioner of Railways,** 7 W.A. L.R. 49. **(Aff.)**
Commissioner of Railways *v.* Leahy, 2 C.L.R. 54.

Le Fanu *v.* **Malcolmson,** 1 H.L.C. 637. **(D.)**
Godhard *v.* James Inglis & Co., 2 C.L.R. 78.

Le Feuvre *v.* **Lankester,** 3 E. & B. 530; 23 L.J.Q.B. 254. **(F.)**
Norton *v.* Taylor, 2 C.L.R. 291.

Lenthall *v.* **Crow,** 16 L.R. (N.S.W.) 111. **(D.)**
Hughes *v.* Wilson, 22 W.N. (N.S.W.) 32.

Lewis, *In re,* 1903 Q.W.N. 65. **(F.)**
In re French, 1905 Q.W.N. 55.

Lister *v.* **Lane,** [1893] 2 Q.B. 212. **(F.)**
Turkington *v.* Turkington, 7 N.Z. Gaz. L.R. 92, 497.

Lloyd *v.* **Osborne,** 20 L.R. (N.S.W.) 127; 15 W.N. 267. **(D.)**
Green *v.* McEvoy, 4 S.R. (N.S.W.) 667; 21 W.N. 223.

London, Chatham & Dover Ry. Co. *v.* **South Eastern Ry. Co.,** [1892] 1 Ch. 120. **(F.)**
Raymond *v.* Friedlander, 7 N.Z. Gaz. L.R. 163.

London (Mayor of) *v.* **Cox,** L.R. 2 H.L. 239. **(Appl.)**
Zimpel *v.* Allard, 2 C.L.R. 117.

London & N.W. Ry. Co. *v.* **Evans,** [1893] 1 Ch. **(F.)**
Blackball Coal Co. *v.* Shrives, 7 N.Z. Gaz. L.R. 35.

Lord Advocate *v.* **Bogie,** [1894] A.C. 83. **(F.)**
Scarfe, *In re,* 1904 S.A.L.R. 15.

Ludgrave *v.* **Belcher,** 5 A.L.T. 72. **(Q. & NF.)**
Grocock *v.* Stevenson, 27 A.L.T. Supp. 5; 11 A.L.R. (C.N.) 50.

Lundberg *v.* **Lundberg,** 22 W.N. (N.S.W.) 98. **(D.)**
Parry *v.* Parry, 22 W.N. (N.S.W.) 177.

Lyon *v.* **Fishmongers' Co.,** 1 A.C. 662, 683. **(F.)**
Skey *v.* Mayor, &c. of Dunedin, 24 N.Z. L.R. 804; 7 Gaz. L.R. 657.

McCracken *v.* **Woods,** 4 V.L.R. (L.) 222. **(F.)**
In the will of Blake; O'Neil *v.* Hart, 1905 V.L.R. 107; 26 A.L.T. 162; 11 A.L.R. 133.

McDonnell *v.* **Evans,** 11 C.B. 930. **(F.)**
R. *v.* Hollis, 5 S.R. (N.S.W.) 283; 22 W.N. 83.

McHugh *v.* **Robertson,** 11 V.L.R. 410; 6 A.L.T. 227. **(F.)**
Cawsey *v.* Davidson, 27 A.L.T. 121; 11 A.L.R. 446.

McIntosh, *Re,* 4 S.R. (N.S.W.) 59; 21 W.N. 29. **(Q.)**
In re McIntosh, 5 S.R. (N.S.W.) 389; 22 W.N. 149.

McKeon *v.* **Miller,** 5 S.R. (N.S.W.) 128; 22 W.N. 9. **(R.)**
Miller *v.* McKeon, 11 A.L.R. 489.

McMillan, *Re,* 22 W.N. 16. **(V.)**
Re McMillan, 5 S.R. (N.S.W.) 350; 22 W.N. 75.

McNaghten *v.* **Paterson,** 5 S.R. (N.S.W.) 90; 22 W.N. 25. **(R.)**
Paterson *v.* McNaghten, 2 C.L.R. 615; 11 A.L.R. 263.

McQueen *v.* **Farquhar,** 11 Ves. 470. **(F.)**
Gilbert *v.* Stanton, 2 C.L.R. 447; 11 A.L.R. 208.

Makin *v.* **Attorney-General of N.S.W.,** [1894] A.C. 57. **(F.)**
R. *v.* Lawrence, 7 N.Z.L.R. 559.

Malam, *Re,* [1894] 3 Ch. 578. **(D.)**
Woolcott *v.* Woolcott, 1905 V.L.R. 599; 27 A.L.T. 19; 11 A.L.R. 343.

Manchester and Oldham Bank, *In re,* 54 L.J. Ch. 926. **(F.)**
In re Colonial Finance, &c., Corporation, 5 S.R. (N.S.W.) 506; 22 W.N. 179.

Markey *v.* **Coote,** Ir. R. 10 C.L. 149. **(F.)**
Walker *v.* Creaven, 7 N.Z. Gaz. L.R. 435; 8 Gaz. L.R. 113.

Marriott *v.* **Chamberlain,** 17 Q.B.D. 154. **(C.)**
National Starch Co. *v.* Robert Harper & Co., 27 A.L.T. 35; 11 A.L.R. 335.

Marshall *v.* **Colonial Bank of Australasia,** 1 C.L.R. 632; 10 A.L.R. 210. **(C.)**
Austin *v.* Austin, 1905 V.L.R. 564; 27 A.L.T. 17, 43; 11 A.L.R. 337.

Martin *v.* **Beath Schiess & Co.,** 1905 V.L.R. 386; 26 A.L.T. 96; 10 A.L.R. 204. **(R.)**
Beath, Schiess & Co. *v.* Martin, 2 C.L.R. 716; 11 A.L.R. 325.

Martin *v.* **Ferris,** 5 S.R. (N.S.W.) 287; 22 W.N. 90. **(R.)**
Ferris *v.* Martin, 2 C.L.R. 525; 11 A.L.R. 470.

Martin *v.* **Trustees of British Museum,** 10 T.L.R. 215. **(F.)**
Seddon *v.* Taylor, 7 N.Z. Gaz. L.R. 389.

Master Carriers' Association of N.S.W., *Ex parte,* 5 S.R. (N.S.W.) 77; 22 W.N. 27. **(Aff.)**
Trolly, Draymen & Carters' Union of Sydney, &c., *v.* Master Carriers' Association of N.S.W., 2 C.L.R. 509.

Master Retailers' Association of N.S.W., *Ex parte,* 4 S.R. (N.S.W.) 384; 21 W.N. 133. **(R.)**
Master Retailers' Association of N.S.W. *v.* Shop Assistants' Union of N.S.W., 2 C.L.R. 94; 11 A.L.R. 167; 1905 A.R. 174.

Matthews *v.* **Saurin,** 31 L.R. Ir. 181. **(F.)**
Holden *v.* Black, 2 C.L.R. 768; 11 A.L.R. 393.

Matthews *v.* **Trustees Executors, &c., Co.,** 24 V.L.R. 258, 643. **(Ex.)**
Equity Trustees *v.* Fenwick, 1905 V.L.R. 154; 26 A.L.T. 137; 11 A.L.R. 15.

Medlock, *In re,* 55 L.J. Ch. 738. **(D.)**
In the will of Carfrae, 1905 V.L.R. 641; 27 A.L.T. 71; 11 A.L.R. 451.

Melbourne Tramway & Omnibus Co. *v.* **Mayor of Melbourne,** 28 V.L.R. 647. **(D.)**
R. *v.* Atkinson, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412.

Mid-Kent Fruit Factory, *In re,* 1896 1 Ch. 567. **(F.)**
Atkinson *v.* Learmouth, 26 A.L.T. 233; 11 A.L.R. 191.

Milford Docks Co., *In re,* 23 Ch. D. 292.
Wilkie *v.* McCalla, 1905 V.L.R. 104; 26 A.L.T. 194; 11 A.L.R. 100.

Mill *v.* **Hill,** 3 H.L.C. 828. **(F.)**
Darbyshire *v.* Darbyshire, 2 C.L.R. 787; 11 A.L.R. 417.

Miller *v.* **Hall,** 8 L.R. (N.S.W.) 469. **(Q.)**
Egan *v.* Pigott, 21 W.N. (N.S.W.) 251.

Miller *v.* **Parnell,** 6 Taunt. 370. **(F.)**
Ferris *v.* Martin, 2 C.L.R. 525; 11 A.L.R. 470.

Mills *v.* **R.,** 14 V.L.R. 940. **(D.)**
Brown *v.* Victorian Railway Commissioners, 1905 V.L.R. 472; 27 A.L.T. 25; 11 A.L.R. 276.

Millward *v.* **Millward,** 57 L.T. 569. **(F.)**
Bagnall *v.* Bagnall, 7 N.Z. Gaz. L.R. 454.

Mitchell *v.* **Ah King,** 21 L.R. (N.S.W.) 64; 16 W.N. 165. **(O.)**
Quan Yick *v.* Hinds, 2 C.L.R. 345; 11 A.L.R. 223.

Moderana *v.* **Backhouse,** 7 W.A.L.R. 39; 1 C.L.R. 675. **(F.)**
Hill *v.* Betrix, 7 W.A.L.R. 116.

Moffatt, *In re,* 3 V.R. (E.) 166. **(C.)**
Dougall *v.* Dougall, 1905 V.L.R. 82; 26 A.L.T. 122.

Mogul Steamship Co. *v.* **McGregor, Gow & Co.,** 23 Q.B.D. 598; [1892] A.C. 25. **(C.)**
Heggie *v.* Brisbane Shipwrights' Union, 1905 S.R. (Q.) 155; Q.W.N. 62.

Monti *v.* **Barnes,** [1901] 1 K.B. 205. **(F.)**
Reid *v.* Smith, 1905 S.R. (Q.) 130; Q.W.N. 48.

Mooney *v.* **Williams,** 5 S.R. (N.S.W.); 22 W.N. 86. **(R.)**
Mooney *v.* Williams, 11 A.L.R. 437.

Moore *v.* **The Public Trustee,** 20 N.Z.L.R. 288. **(D.)**
R. *v.* Price, 24 N.Z.L.R. 291; 7 Gaz. L.R. 40.

Morgan, *Ex parte,* 2 Ch. D. 72. **(F.)**
Allen, *In re,* 5 S.R. (N.S.W.) 55; 22 W.N. 47.

Morrice *v.* **Morrice,** 14 L.R. (N.S.W.) Eq. 211. **(D.)**
In re Goodwin, 4 S.R. 682; 21 W.N. 222.

Mure *v.* **Kaye,** 4 Taunt. 34. **(N.F)**
Brown *v.* Lizars, 11 A.L.R. 345.

Nation's Case L.R. 3 Eq. 77. **(F.)**
In re Colonial Finance, &c., Corporation, 5 S.R. (N.S.W.) 506; 22 W.N. 179.

Neal, *Ex parte,* 14 Ch. D. 579. **(F.)**
In re Beck, 24 N.Z.L.R. 491; 7 Gaz. L.R. 104.

Neighbour *v.* **Moore,** 4 Q.L.J. 145. **(F.)**
Walker *v.* Chapman, 1904 S.R. (Q.) 330; Q.W.N. 83.

New Zealand Loan and Mercantile Agency Co. *v.* **Corporation of Wellington,** 9 N.Z.L.R. 10. **(F.)**
Smith *v.* Christie, 24 N.Z.L.R. 561; 7 Gaz. L.R. 369.

Nicholls *v.* **Rosenfeld,** 7 L.R. (N.S.W.) 322; 3 W.N. 19. **(D.)**
Ferris *v.* Martin, 2 C.L.R. 525; 11 A.L.R. 470.

Norton *v.* **Taylor,** 22 W.N. (N.S.W.) 36. *See* Norton *v.* Taylor, 2 C.L.R. 291.

O'Connor *v.* **Price,** 14 V.L.R. 946; 10 A.L.T. 152. **(F.)**
Graves *v.* Williams, 1905 V.L.R. 215; 26 A.L.T. 189; 11 A.L.R. 98.

Ogden's Limited *v.* **Nelson,** [1903] 2 K.B. 287; [1904] 2 K.B. 410. **(D.)**
In re North Otago Dairy Co., 24 N.Z. L.R. 748.

Ormrod's Settled Estate, *In re,* [1892] 2 Ch. 318. **(F.)**
In the will of Blake; O'Neil *v.* Hart, 1905 V.L.R. 306; 27 A.L.T. 12; 11 A.L.R. 258.

Owen *v.* **London & N.W. Ry. Co.,** L.R. 3 Q.B. 54. **(F.)**
In re McMillan, 5 S.R. (N.S.W.) 350; 22 W.N. 75.

Palmer *v.* **District Lands Registrar,** 23 N.Z. L.R. 1013; 5 Gaz. L.R. 481. **(NF.)**
In re Land Transfer Act, 8 N.Z. Gaz. L.R. 4.

Patching *v.* **Barnett,** 51 L.J. Ch. 74. **(D.)**
Metcalfe *v.* O'Kennedy, 4 S.R. (N.S.W.) 633; 21 W.N. 240.

Paterson *v.* **Fleming,** 23 N.Z.L.R. 676; 6 Gaz. L.R. 381, 394. **(D.)**
Lysnar *v.* Binnie, 24 N.Z.L.R. 241.

Payne *v.* **R.,** 26 V.L.R. 705. **(D.)**
R. *v.* Atkinson, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412.

Pearks, Gunston & Tee *v.* **Houghton,** [1902] 1 K.B. 889. **(C.)**
Rider *v.* Bacchus Marsh Concentrated Milk Co., 1905 V.L.R. 147; 26 A.L.T. 156; 11 A.L.R. 37.

Pechotsch *v.* **Mutual Life Insurance Co. of New York,** 5 S.R. (N.S.W.) 252; 22 W.N. 103. **(Aff.)**
Mutual Life Insurance Co. of New York *v.* Pechotsch, 2 C.L.R. 823; 11 A.L.R. 467.

Pender, *In re,* 15 V.L.R. 474. **(F.)**
In the will of Blake; O'Neil *v.* Hart, 1905 V.L.R. 306; 27 A.L.T. 12; 11 A.L.R. 258.

Phillips *v.* **Eyre,** L.R. 6 Q.B. 1. **(Ex.)**
Potter *v.* Broken Hill Proprietary Co., 1905 V.L.R. 612; 27 A.L.T. 74; 11 A.L.R. 357.

Phillips *v.* **Oakley,** 6 L.R. (N.S.W.) 105; 1 W.N. 143. **(Q.)**
O'Brien *v.* Hains, 5 S.R. (N.S.W.) 419; 22 W.N. 136.

Philpott, *Re,* 4 V.L.R. (E.) 20. **(F.)**
In the will of Streeter, 26 A.L.T. 171; 11 A.L.R. 99.

Pickersgill *v.* **Rodger,** 5 Ch. D. 163, 170. **(Q.)**
Goodwin, *In re,* 22 W.N. (N.S.W.) 215.

Plummer, *In re,* [1900] 2 Q.B. 790. **(F.)**
Jack *v.* Smail, 2 C.L.R. 684; 11 A.L.R. 372.

Pollitt, *In re,* [1893] 1 Q.B. 175, 455. **(F.)**
Atkinson *v.* Learmonth, 26 A.L.T. 233; 11 A.L.R. 191.

Proudfoot *v.* **Bunbury,** Mac. 1060. **(F.)**
Crowley *v.* Andresen, 7 N.Z. Gaz. L.R. 453.

Quick *v.* **Cox,** 7 N.Z. Gaz. L.R. 492. **(NF.)**
Lee Sun *v.* Conolly, 24 N.Z.L.R. 553; 7 Gaz. L.R. 494.

Quinn *v.* **Leathem,** [1901] A.C. 495. **(C.)**
Heggie *v.* Brisbane Shipwrights' Union, 1905 S.R. (Q.) 155; Q.W.N. 62.

Radley *v.* **L. & N.W. Ry. Co.,** 1 A.C. 759. **(F.)**
Shearer *v.* Dunedin (Corporation of), 24 N.Z.L.R. 192; 7 Gaz. L.R. 422.

Range, *In re,* 1904 S.R. (Q.) 86. **(F.)**
R. *v.* Nerang (Licensing Justices), 1905 Q.W.N. 27.

Rankin *v.* **Scott, Fell & Co.,** 4 S.R. (N.S.W.) 547. **(V.)**
Rankin *v.* Scott, Fell & Co., 2 C.L.R. 164; 11 A.L.R. 25.

Rea, *In re*; **Rea** *v.* **Rea,** [1902] 1 Ir. 451. **(F.)**
Queensland Trustees Ltd. *v.* Nightingale, 4 S.R. (N.S.W.) 751; 21 W.N. 259.

Rein *v.* **Stein,** [1892] 1 Q.B. 753. **(F.)**
Clarke *v.* Clarke, 1905 Q.W.N. 11.

Rennie *v.* **Beresford,** 15 L.J. Ex. 2. **(D.)**
Willis *v.* Doyle, 22 W.N. (N.S.W.) 33.

R. *v.* **Amora,** 18 L.R. (N.S.W.) 114; 13 W.N. 229. **(D.)**
Slattery *v.* R., 2 C.L.R. 546.

R. *v.* **Armitage,** 42 L.J.M.C. 15. **(D.)**
Dormer *v.* Taylor, 7 N.Z. Gaz. L.R. 148.

R. *v.* **Austin,** 29 V.L.R. 859. **(NF.)**
R. *v.* Atkinson, 1905 V.L.R. 698.

R. *v.* **Bingham,** 2 L.R. (N.S.W.) 90. **(Appr.)**
Sherwood *v.* Spencer, 2 C.L.R. 250.

R. *v.* Bradlaugh, 15 Cox C.C. 217. **(D.)**
R. *v.* Gibson, 24 N.Z.L.R. 799; 7 Gaz. L.R. 528.

R. *v.* Brodie, 15 L.R. (N.S.W.) 436; 11 W.N. 77. **(D.)**
Slattery *v.* R., 2 C.L.R. 546.

R. *v.* Brown, [1895] 1 Q.B. 119; 18 Cox C.C. 81. **(C.)**
R. *v.* Hills, 24 N.Z.L.R. 37.

R. *v.* Buckley's Swamp Estate, 18 V.L.R. 657; 14 A.L.T. 140. **(D.)**
R. *v.* Palmer, 11 A.L.R. 39.

R. *v.* Chambers, 65 L.J.M.C. 214; 18 Cox C.C. 401. **(C.)**
R. *v.* Hills, 24 N.Z.L.R. 37.

R. *v.* Chirnside, 1905 V.L.R. 522. **(F.)**
R. *v.* Atkinson, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412.

R. *v.* Dunedin, Mayor, &c., of, N.Z.L.R. 1 S.C. 321. **(D.)**
Wairau Hospital, &c., Board *v.* Picton Hospital, &c., Board, 24 N.Z.L.R. 45.

R. *v.* Gaunt, L.R. 2 B.Q. 466. **(F.)**
Claxton *v.* Claxton, 1905 S.R. (Q.) 87; Q.W.N. 37.

R. *v.* Gibson, 18 Q.B.D. 537. **(D.)**
R. *v.* Midwinter, 22 W.N. (N.S.W.) 202.

R. *v.* Gidney, 24 V.L.R. 795; 25 V.L.R. 81; 21 A.L.T. 57; 5 A.L.R. 220. **(F.)**
R. *v.* Chirnside, 1905 V.L.R. 522; 27 A.L.T. 52; 11 A.L.R. 252; R. *v.* Atkinson, 1905 V.L.R. 698; 27 A.L.T. 86; 11 A.L.R. 412.

R. *v.* Giles, 34 L.J.M.C. 50. **(C.)**
R. *v.* Kirkby, 7 N.Z. Gaz. L.R. 448.

R. *v.* Hall, Addison's Dig. 303. **(F.)**
R. *v.* Lilliecrap; Lilliecrap *v.* R., 2 C.L.R. 681; 5 S.R. (N.S.W.) 425; 22 W.N. 125.

R. *v.* Kellor District Road Board, 1 V.R. (L.) 14. **(D.)**
Wairau Hospital, &c., Board *v.* Picton Hospital, &c., Board, 24 N.Z.L.R. 45.

R. *v.* Lilliecrap, 5 S.R. (N.S.W.) 425; 22 W.N. 125.
See Lilliecrap *v.* R., 2 C.L.R. 681.

R. *v.* Oddy, 2 Den. C.C. 264; 20 L.J.M.C. 198. **(F.)**
R. *v.* Emmett, 1905 V.L.R. 718; 27 A.L.T. 112; 11 A.L.R. 484.

R. *v.* Padbury, 5 Q.B.D. 126. **(F.)**
Goodwin *v.* Ross, 7 N.Z. Gaz. L.R. 545.

R. *v.* Palmer, 1905 V.L.R. 30; 26 A.L.T. 85. **(App.)**
R. *v.* Chirnside, 1905 V.L.R. 522; 27 A.L.T. 52; 11 A.L.R. 252.

R. *v.* Pownall, [1893] 2 Q.B. 158. **(F.)**
R. *v.* Toowoomba (Licensing Justices), 1905 S.R. (Q.) 185; Q.W.N. 65.

R. *v.* Pritchard, 1 S.R. (N.S.W.) 364; 18 W.N. 259. **(D.)**
Slattery *v.* R., 2 C.L.R. 546.

R. *v.* Rochester (Mayor of), 7 E. & B. 910; 27 L.J.Q.B. 45. **(D.)**
Bastings *v.* Bruce Licensing Committee, 7 N.Z. Gaz. L.R. 106.

R. *v.* Scully, 6 N.Z. Gaz. L.R. 248. **(F.)**
R. *v.* Sweeney, 7 N.Z. Gaz. L.R. 529.

R. *v.* Slater, 67 J.P. 299. **(F.)**
Smith *v.* Smith, 7 N.Z. Gaz. L.R. 540.

R. *v.* Slattery, 5 S.R. (N.S.W.) 294; 22 W.N. 92. **(R.)**
Slattery *v.* R., 2 C.L.R. 546.

R. *v.* Smith, 18 Cox C.C. 470. **(F.)**
R. *v.* Warton, 1905 S.R. (Q.) 167; Q.W.N. 63.

R. *v.* Smith, 9 V.L.R. (L.) 404. **(F.)**
R. *v.* Affleck, 1905 V.L.R. 130; 26 A.L.T. 148; 11 A.L.R. 86.

R. *v.* Styche, 20 N.Z.L.R.C.A. 744; 3 Gaz. L.R.C.A. 249. **(F.)**
R. *v.* Yos Yujnovich, 7 N.Z. Gaz. L.R. 74.

Richard Mills & Co., *In re*, [1905] W.N. 36. **(F.)**
Re Clarke & Solomons' Agreements Trusts, 5 S.R. (N.S.W.) 498; 22 W.N. 165.

Riddiford *v.* Mayor, &c., of Lower Hutt, 24 N.Z.L.R. 54; 6 Gaz. L.R. 424. **(NF.)**
In re Land Transfer Act, 8 N.Z. Gaz. L.R. 4.

Right *d.* Compton *v.* Compton, 9 East 267. **(F.)**
In the will of Malin, 1905 V.L.R. 270; 26 A.L.T. 200; 11 A.L.R. 129.

Ritchie *v.* Victorian Railway Commissioners, 25 V.L.R. 272. **(Ex.)**
Tonkin *v.* Jumbunna Coal Co., 27 A.L.T. 99; 11 A.L.R. 454.

Rivers' (Lord) Estate, 16 Ch. D. 588. **(F.)**
In the will of Blake; O'Neil *v.* Hart, 1905 V.L.R. 306; 27 A.L.T. 12; 11 A.L.R. 258.

Roberts, *In re*, [1902] 2 Ch. 834. **(F.)**
In re Noonan, 1904 S.A.L.R. 151.

Roberts *v.* Ahern, 1 C.L.R. 406. **(D.)**
Langwill *v.* Leahy, 4 S.R. (N.S.W.) 717; 21 W.N. 232.

Robey *v.* Snaefell Mining Co., 20 Q.B.D. 152. **(F.)**
Clarke *v.* Clarke, 1905 Q.W.N. 11.

Robinson, *In re*, 31 Ch. D. 247. **(F.)**
In re Buck, 24 N.Z.L.R. 148.

Ross *v.* McIntyre, 11 L.C.C. 255. **(F.)**
Thompson *v.* Anderson, 15 L.C.C. 248.

Rothschild *v.* Hennings, 9 B. & C. 470. **(F.)**
Luke *v.* Waite, 2 C.L.R. 252; 11 A.L.R. 107.

Rouse *v.* Bradford Banking Co., [1894] A.C. 586. **(D.)**
Deane *v.* City Bank of Sydney, 2 C.L.R. 198; 11 A.L.R. 1.

Russell *v.* **Minister for Lands,** 17 N.Z.L.R. S.C. 241. **(F.)**
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